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Rules and Regulations

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6661]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEM- BER 31, 1953

Deduction for Medical, Dental, etc., Expenses

In order to conform the Income Tax Regulations (26 CFR Part 1) under section 213 of the Internal Revenue Code of 1954, relating to medical, dental, etc., expenses, to section 1 of the Act of October 23, 1962 (Public Law 87-863, 76 Stat. 1141), such regulations are amended as follows:

PARAGRAPH 1. Section 1.213 is amended by revising section 213(c), by revising paragraph (1) of section 213(g), by revising subparagraphs (B) and (C) of section 213(g)(2), and by revising the historical note at the end thereof. These amended provisions read as follows:

§ 1.213 Statutory provisions; medical, dental, etc., expenses.

SEC. 213. Medical, dental, etc., expenses. * * *

(c) *Maximum limitations.* Except as provided in subsection (g), the deduction under this section shall not exceed \$5,000, multiplied by the number of exemptions allowed for the taxable year as a deduction under section 151 (other than exemptions allowed by reason of subsection (c) or (d), relating to additional exemptions for age or blindness); except that the maximum deduction under this section shall be:

- (1) \$10,000, if the taxpayer is single and not the head of a household (as defined in section 1(b)(2)) and not a surviving spouse (as defined in section 2(b)) or is married but files a separate return; or
- (2) \$20,000, if the taxpayer files a joint return with his spouse under section 6013, or is the head of a household (as defined in section 1(b)(2)), or a surviving spouse (as defined in section 2(b)).

(g) *Maximum limitation if taxpayer or spouse has attained age 65 and is disabled.*—

(1) *Special rule.* Subject to the provisions of paragraph (2), the deduction under this section shall not exceed:

(A) \$20,000, if the taxpayer has attained the age of 65 before the close of the taxable year and is disabled, or if his spouse has attained the age of 65 before the close of the taxable year and is disabled and if his spouse does not make a separate return for the taxable year, or

(B) \$40,000, if both the taxpayer and his spouse have attained the age of 65 before the close of the taxable year and are disabled and if the taxpayer files a joint return with his spouse under section 6013.

(2) *Amounts taken into account.* * * *

(B) If the taxpayer has attained the age of 65 before the close of the taxable year

and is disabled, amounts paid by him during the taxable year for his medical care shall be taken into account only to the extent that such amounts do not exceed \$20,000; and

(C) If the spouse of the taxpayer has attained the age of 65 before the close of the taxable year and is disabled, amounts paid by the taxpayer during the taxable year for the medical care of his spouse shall be taken into account only to the extent that such amounts do not exceed \$20,000.

[Sec. 213 as amended by secs. 16 and 17, Technical Amendments Act 1958 (72 Stat. 1613); sec. 3, Act of May 14, 1960 (Pub. Law 86-470, 74 Stat. 133); sec. 1, Act of Oct. 23, 1962 (Pub. Law 87-863, 76 Stat. 1141)]

PAR. 2. Section 1.213-1 is amended by revising examples (3) and (4) of paragraph (a) (4) (iii), by revising paragraph (c), and by revising subparagraph (4) of paragraph (g). As amended these provisions read as follows:

§ 1.213-1 Medical, dental, etc., ex- penses.

(a) *Allowance of deduction.* * * *

(4) * * *

(iii) The application of subdivision (i) of this subparagraph may be illustrated by the following examples:

Example (3). D and his wife, E, made a joint income tax return for the calendar year 1962, and reported adjusted gross income of \$30,000. On December 13, 1962, D attained the age of 65. During the year 1962, D's father, F, who was 87 years of age, received over half of his support from, and was a dependent (as defined in section 152) of, D. However, D could not claim an exemption under section 151 for F because F had gross income from rents in 1962 of \$800. D paid the following medical expenses in 1962, none of which were compensated for by insurance or otherwise: hospital and doctor bills for D and E, \$6,500; hospital and doctor bills for F, \$4,850; medicine and drugs for D and E, \$225, and for F, \$225. Since none of the medical expenses are subject to the 3-percent limitation, the amount of medical expenses to be taken into account (before computing the maximum deduction) is \$11,500, computed as follows:

Hospital and doctor bills—for D and E	\$6,500
Hospital and doctor bills—for F	4,850
Medicine and drugs—for D and E	225
Medicine and drugs—for F	225
Total medicine and drugs	450
Less: 1 percent of adjusted gross income (\$30,000)	300
Allowable expenses for medicine and drugs	150
Total medical expenses taken into account	11,500

Since an exemption cannot be claimed for F on the 1962 return of D and E, their deduction for medical expenses (assuming that section 213(g) does not apply) is limited to

\$10,000 for that year (\$5,000 multiplied by the two exemptions allowed for D and E under section 151(b)). If these identical facts had occurred in a taxable year beginning before January 1, 1962, the medical expense deduction for D and E would, for such taxable year, be limited to \$5,000 (\$2,500 multiplied by the two exemptions allowed for D and E under section 151(b)). See paragraph (c) of this section.

Example (4). Assume the same facts as in Example (3), except that D furnished the entire support of his father's twin sister, G, who had no gross income during 1962 and for whom D was entitled to a dependency exemption. In addition, D paid \$4,800 to doctors and hospitals during 1962 for the medical care of G. No part of the \$4,800 was for medicine and drugs, and no amount was compensated for by insurance or otherwise. For purposes of the maximum limitation under section 213(c), the maximum deduction for medical expenses on the 1962 return of D and E is limited to \$15,000 (\$5,000 multiplied by 3, the number of exemptions allowed under section 151, exclusive of the exemptions for old age or blindness). If these identical facts had occurred in a taxable year beginning before January 1, 1962, the medical expense deduction for D and E would, for such taxable year, be limited to \$7,500 (\$2,500 multiplied by the three exemptions allowed under section 151, exclusive of the exemptions for old age or blindness). The medical expenses to be taken into account by D and E for 1962 and the maximum deductions allowable for such expenses are \$15,400 and \$15,000, respectively, computed as follows:

Medical expenses per example (3)	\$11,500
Add: Expenses paid for G	4,800
Less: 3 percent of adjusted gross income (\$30,000)	900
	3,900
Total medical expenses taken into account	15,400
Maximum deduction for 1962 (\$5,000 multiplied by 3 exemptions)	15,000
Medical expenses not deductible	400

(c) *Maximum limitations.* (1) Except as provided in section 213(g) and § 1.213-2 (relating to certain aged and disabled individuals), for taxable years beginning after December 31, 1961, the maximum deduction allowable for medical expenses paid in any one taxable year is the lesser of:

(i) \$5,000 multiplied by the number of exemptions allowed under section 151 (exclusive of exemptions allowed under section 151(c) for a taxpayer or spouse attaining the age of 65, or section 151(d) for a taxpayer who is blind or a spouse who is blind);

(ii) \$10,000, if the taxpayer is single, not the head of a household (as defined in section 1(b)(2)) and not a surviving spouse (as defined in section 2(b)), or is married and files a separate return; or

(iii) \$20,000, if the taxpayer is married and files a joint return with his spouse under section 6013, or is the head of a household (as defined in section 1

RULES AND REGULATIONS

(b)(2)), or a surviving spouse (as defined in section 2(b)).

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. H and W made a joint return for the calendar year 1962 and were allowed five exemptions (exclusive of exemptions under section 151 (c) or (d)), one for each taxpayer and three for their dependents. The adjusted gross income of H and W in 1962 was \$80,000. They paid during such year \$26,000 for medical care, no part of which is compensated for by insurance or otherwise. The deduction allowable under section 213 for the calendar year 1962 is \$20,000, computed as follows:

Payments for medical care in 1962	\$26,000
Less: 3 percent of \$80,000 (adjusted gross income)	2,400

Excess of medical expenses in 1962 over 3 percent of adjusted gross income	23,600
Allowable deduction for 1962 (\$5,000 multiplied by five exemptions allowed under section 151 (b) and (e) but not in excess of \$20,000)	20,000

(3) Except as provided in section 213 (g) and § 1.213-2 (relating to certain aged and disabled individuals), for taxable years beginning before January 1, 1962, the maximum deduction allowable for medical expenses paid in any one taxable year is the lesser of:

(i) \$2,500 multiplied by the number of exemptions allowed under section 151 (exclusive of exemptions allowed under section 151(c) for a taxpayer or spouse attaining the age of 65, or section 151(d) for a taxpayer who is blind or a spouse who is blind);

(ii) \$5,000, if the taxpayer is single, not the head of a household (as defined in section 1(b)(2)) and not a surviving spouse (as defined in section 2(b)), or is married and files a separate return; or

(iii) \$10,000, if the taxpayer is married and files a joint return with his spouse under section 6013, or is the head of a household (as defined in section 1(b)(2)), or a surviving spouse (as defined in section 2(b)).

(4) For the maximum deduction allowable if the taxpayer or his spouse is age 65 or over and is disabled, see § 1.213-2.

(g) *Reimbursement for expenses paid in prior years.* * * *

(4) The application of subparagraphs (1), (2), and (3) of this paragraph may be illustrated by the following examples. Examples (1) and (2) reflect the maximum limitation on the medical expense deduction applicable to taxable years beginning after December 31, 1961. Examples (3) and (4) reflect the maximum limitation on the medical expense deduction applicable to taxable years beginning prior to January 1, 1962. For explanation of such maximum medical expense limitations, see paragraph (c) of this section.

Example (1). Taxpayer A, a single individual (not the head of a household and not a surviving spouse) with one dependent, is entitled to two exemptions under the provisions of section 151. He had an adjusted gross income of \$35,000 for the calendar year 1962. During 1962 he paid \$16,000 for medi-

cal care. A received no reimbursement for such medical expenses in 1962, but in 1963 he received \$6,000 upon an insurance policy covering the medical expenses which he paid in 1962. A was allowed a deduction of \$10,000 (the maximum) from his adjusted gross income for 1962. The amount which A must include in his gross income for 1963 is \$1,050, and the amount to be excluded from gross income for 1963 is \$4,950, computed as follows:

Payments for medical care in 1962 (not reimbursed in 1962)	\$16,000
Less: 3 percent of \$35,000 (adjusted gross income)	1,050

Excess of medical expenses not reimbursed in 1962 over 3 percent of adjusted gross income	14,950
Allowable deduction for 1962	10,000

Amount by which the medical deductions for 1962 would have been greater than \$10,000 but for the limitations on the maximum amount provided by section 213	4,950
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Reimbursement received in 1963	\$6,000
Less: Amount by which the medical deduction for 1962 would have been greater than \$10,000 but for the limitations on the maximum amount provided by section 213	4,950

Reimbursement received in 1963 reduced by the amount by which the medical deduction for 1962 would have been greater than \$10,000 but for the limitations on the maximum amount provided by section 213	1,050
Amount attributed to medical deduction taken for 1962	1,050
Amount to be included in gross income for 1963	1,050
Amount to be excluded from gross income for 1963 (\$6,000 less \$1,050)	4,950

Example (2). Assuming that A, in example (1), received \$15,000 in 1963 as reimbursement for the medical expenses which he paid in 1962, the amount which A must include in his gross income for 1963 is \$10,000, and the amount to be excluded from gross income for 1963 is \$5,000, computed as follows:

Reimbursement received in 1963	\$15,000
Less: Amount by which the medical deduction for 1962 would have been greater than \$10,000 but for the limitations on the maximum amount provided by section 213	4,950

Reimbursement received in 1963 reduced by the amount by which the medical deduction for 1962 would have been greater than \$10,000 but for the limitations on the maximum amount provided by section 213	10,050
Deduction allowable for 1962	10,000
Amount of reimbursement received in 1963 to be included in gross income for 1963 as attributable to deduction allowable for 1962	10,000
Amount to be excluded from gross income for 1963 (\$15,000 less \$10,000)	5,000

Example (3). Taxpayer A, a single individual (not the head of a household and not a surviving spouse) with one dependent, is entitled to two exemptions under the provisions of section 151. He had an adjusted gross income of \$35,000 for the calendar year 1956. During 1956 he paid \$9,000 for medical

care. A received no reimbursement for such medical expenses in 1956, but in 1957 he received \$6,000 upon an insurance policy covering the medical expenses which he paid in 1956. A was allowed a deduction of \$5,000 (the maximum) from his adjusted gross income for 1956. The amount which A must include in his gross income for 1957 is \$3,050 and the amount to be excluded from gross income for 1957 is \$2,950, computed as follows:

Payments for medical care in 1956 (not reimbursed in 1956)	\$9,000
Less: 3 percent of \$35,000 (adjusted gross income)	1,050

Excess of medical expenses not reimbursed in 1956 over 3 percent of adjusted gross income	7,950
Allowable deduction for 1956	5,000

Amount by which the medical deductions for 1956 would have been greater than \$5,000 but for the limitations on the maximum amount provided by section 213	2,950
--	-------

Reimbursement received in 1957	6,000
Less: Amount by which the medical deduction for 1956 would have been greater than \$5,000 but for the limitations on the maximum amount provided by section 213	2,950

Reimbursement received in 1957 reduced by the amount by which the medical deduction for 1956 would have been greater than \$5,000 but for the limitations on the maximum amount provided by section 213	3,050
Amount attributed to medical deduction taken for 1956	3,050
Amount to be included in gross income for 1957	3,050
Amount to be excluded from gross income for 1957 (\$6,000 less \$3,050)	2,950

Example (4). Assuming that A, in example (3), received \$8,000 in 1957 as reimbursement for the medical expenses which he paid in 1956, the amount which A must include in his gross income for 1957 is \$5,000 and the amount to be excluded from gross income for 1957 is \$3,000 computed as follows:

Reimbursement received in 1957	\$8,000
Less: Amount by which the medical deduction for 1956 would have been greater than \$5,000 but for the limitations on the maximum amount provided by section 213	2,950

Reimbursement received in 1957 reduced by the amount by which the medical deduction for 1956 would have been greater than \$5,000 but for the limitations on the maximum amount provided by section 213	5,050
Deduction allowable for 1956	5,000
Amount of reimbursement received in 1957 to be included in gross income for 1957 as attributable to deduction allowable for 1956	5,000
Amount to be excluded from gross income for 1957 (\$8,000 less \$5,000)	3,000

PAR. 3. Section 1.213-2 is amended by revising paragraph (a), by revising subdivision (ii) of paragraph (b)(1), and by revising subparagraph (2) of paragraph (b). As amended, these provisions read as follows:

§ 1.213-2 Maximum limitation on deduction if taxpayer or spouse is age 65 or over and is disabled.

(a) *In general.* Section 213(g) provides that the limitation of section 213(c) on the amount of deduction allowable for medical expenses shall not apply in certain cases.

(1) *Taxable years beginning after December 31, 1961.* For taxable years beginning after December 31, 1961, the maximum amount that is deductible under section 213 for medical expenses shall be:

(i) \$20,000, if the taxpayer has attained the age of 65 before the close of the taxable year and is disabled, or

(ii) \$20,000, if his spouse has attained the age of 65 before the close of the taxable year and is disabled and if his spouse does not file a separate return for the taxable year, or

(iii) \$40,000, if both the taxpayer and his spouse have attained the age of 65 before the close of the taxable year and are disabled and if they file a joint return under section 6013.

(2) *Taxable years beginning after December 31, 1957, and before January 1, 1962.* For taxable years beginning after December 31, 1957, and before January 1, 1962, the maximum amount that is deductible under section 213 for medical expenses shall be:

(i) \$15,000, if the taxpayer has attained the age of 65 before the close of the taxable year and is disabled, or

(ii) \$15,000, if his spouse has attained the age of 65 before the close of the taxable year and is disabled and if his spouse does not file a separate return for the taxable year, or

(iii) \$30,000, if both the taxpayer and his spouse have attained the age of 65 before the close of the taxable year and are disabled and if they file a joint return under section 6013.

(b) *Includible medical expenses.* * * *

(1) * * *

(ii) The application of this subparagraph may be illustrated by the following example in which H and W file a joint return and have no dependents:

Example. H, who is over age 65 but not disabled, spends \$12,000 for medical care for himself during the taxable year 1962 and \$18,000 for the medical care of W, who is age 67 and is disabled throughout the taxable year. As a result of the application of the provisions of this paragraph and section 213(c), H would be entitled to a deduction of \$10,000 for expenses paid for his own medical care, while under section 213(g) he would be allowed a deduction of \$18,000 for the medical care of W, a total of \$28,000.

(2) (i) For taxable years beginning after December 31, 1961, amounts paid for the medical care of an individual who qualifies for the increased deduction provided by section 213(g) are deductible only to the extent such amounts do not exceed \$20,000. For example, if, for the taxable year 1962, both the taxpayer and his spouse were age 65 or over and disabled, and the taxpayer paid \$25,000 for medical care for himself, and \$10,000 for medical care for his spouse, the maximum deduction allowable on a joint re-

turn would be \$30,000 (\$20,000 for the taxpayer and \$10,000 for his spouse).

(ii) For taxable years beginning after December 31, 1957, and before January 1, 1962, amounts paid for the medical care of an individual who qualifies for the increased deduction provided by section 213(g) are deductible only to the extent such amounts do not exceed \$15,000. For example, if, for the taxable year 1960, both the taxpayer and his spouse were age 65 or over and disabled, and the taxpayer paid \$20,000 for medical care for himself, and \$5,000 for medical care for his spouse, the maximum deduction allowable on a joint return would be \$20,000 (\$15,000 for the taxpayer and \$5,000 for his spouse).

Because this Treasury decision merely conforms the regulations to the increase in the maximum limitation on medical expense deductions provided by the Act of October 23, 1962 (Public Law 87-863), it is found to be unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: June 21, 1963.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

[F.R. Doc. 63-6800; Filed, June 26, 1963;
8:54 a.m.]

SUBCHAPTER C—EMPLOYMENT TAXES
[T.D. 6658]

PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Miscellaneous Amendments

On April 2, 1963, notice of proposed rule making was published in the FEDERAL REGISTER (28 F.R. 3168), with respect to conforming the Employment Tax Regulations (26 CFR Part 31) to the amendments made to the Internal Revenue Code of 1954 by section 104 of the Temporary Unemployment Compensation Act of 1958 (72 Stat. 173), as amended by section 524(b) of the Social Security Amendments of 1960 (74 Stat. 982), by section 22(a) of the Alaska Omnibus Act (73 Stat. 146), by section 18(d) of the Hawaii Omnibus Act (74 Stat. 416), by Title V of the Social Security Amendments of 1960 (74 Stat. 970), by section 14 of the Temporary Extended Unemployment Compensation Act of 1961 (75 Stat. 16), by section 110(f) of the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 537), by section 1 of the Act of September 26, 1961 (Public Law 87-321, 75 Stat. 683), and by section 7(k) of the Self-Employed Individuals Tax Retirement Act of 1962 (76 Stat. 830). No objection to the rules proposed was received during the 30-day

period prescribed in the notice. The regulations as proposed are hereby adopted, subject to the changes set forth below, conforming the regulations to the provisions of section 2 of the Act of May 29, 1963 (Public Law 88-31, 77 Stat. 51).

PARAGRAPH 1. Section 31.3301 is revised.

PAR. 2. Paragraph (a) of § 31.3301-3 is revised.

PAR. 3. In § 31.3302(d) section 3302(d) (1) and the historical note are revised.

Because paragraphs 1, 2, and 3 of this Treasury decision relate to a reduction in the rate of tax, it is hereby found that it is unnecessary, with respect to such changes, to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: June 20, 1963.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

In order to conform the Employment Tax Regulations (26 CFR Part 31) to the provisions of section 104 of the Temporary Unemployment Compensation Act of 1958 (72 Stat. 173), as amended by section 524(b) of the Social Security Amendments of 1960 (74 Stat. 982), to section 22(a) of the Alaska Omnibus Act (73 Stat. 146), to section 18(d) of the Hawaii Omnibus Act (74 Stat. 416), to Title V of the Social Security Amendments of 1960 (74 Stat. 970), to section 14 of the Temporary Extended Unemployment Compensation Act of 1961 (75 Stat. 16), to section 110(f) of the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 537), to section 1 of the Act of September 26, 1961 (Public Law 87-321, 75 Stat. 683), and to section 7(k) of the Self-Employed Individuals Tax Retirement Act of 1962 (76 Stat. 830), such regulations are amended as follows:

PARAGRAPH 1. Paragraph (a)(5) of § 31.0-2 is amended by revising subdivision (ii), and by adding subdivisions (iii), (iv), and (v). These amended and added provisions read as follows:

§ 31.0-2 General definitions and use of terms.

(a) *In general.* * * *

(5) * * *

(ii) The Social Security Amendments of 1956 means the act approved August 1, 1956 (70 Stat. 807), as amended.

(iii) The Social Security Amendments of 1958 means the act approved August 28, 1958 (72 Stat. 1013), as amended.

(iv) The Social Security Amendments of 1960 means the act approved September 13, 1960 (74 Stat. 924).

(v) The Social Security Amendments of 1961 means the act approved June 30, 1961 (75 Stat. 131).

PAR. 2. Section 31.3301 is amended to read as follows:

RULES AND REGULATIONS

§ 31.3301 Statutory provisions; rate of tax.

SEC. 3301. *Rate of tax.* There is hereby imposed on every employer (as defined in section 3306(a)) for the calendar year 1961 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3.1 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)) after December 31, 1938. In the case of wages paid during the calendar year 1962, the rate of such tax shall be 3.5 percent in lieu of 3.1 percent. In the case of wages paid during the calendar year 1963, the rate of such tax shall be 3.35 percent in lieu of 3.1 percent.

[Sec. 3301 as amended by sec. 523(a), Social Security Amendments 1960; sec. 14(a), Temporary Extended Unemployment Compensation Act 1961 (75 Stat. 16); sec. 2(a), Act of May 29, 1963 (Pub. Law 88-31, 77 Stat. 51)]

PAR. 3. Section 31.3301-2 is amended to read as follows:

§ 31.3301-2 Measure of tax.

The tax for any calendar year is measured by the amount of wages paid by the employer during such year with respect to employment after December 31, 1938. (See § 31.3306(b)-1, relating to wages, and §§ 31.3306(c)-1 to 31.3306(c)-3, inclusive, relating to employment.)

PAR. 4. Section 31.3301-3 is amended to read as follows:

§ 31.3301-3 Rate and computation of tax.

(a) The rates of tax with respect to wages paid in calendar years after 1954 are as follows:

	Percent
In the calendar years 1955 to 1960, both inclusive.....	3
In the calendar year 1961.....	3.1
In the calendar year 1962.....	3.5
In the calendar year 1963.....	3.35
In the calendar year 1964 and subsequent calendar years.....	3.1

(b) The tax is computed by applying to the wages paid in a calendar year, with respect to employment after December 31, 1938, the rate in effect at the time the wages are paid.

PAR. 5. Section 31.3302 (a)-1 is amended by revising paragraph (c) (2), the examples in paragraph (c) (3), and the example in paragraph (c) (4), to read as follows:

§ 31.3302(a)-1 Credit against tax for contributions paid.

(c) *Limitation on amount of credit allowable based on time when contributions are paid—* * * *

(2) *Amount of credit allowable when contributions are paid on or before last day for filing return.* Contributions paid into a State unemployment fund on or before the last day upon which the Federal return for the taxable year is required to be filed may be credited against the tax in an amount equal to such contributions, but not, however, to exceed the total credits determined pursuant to § 31.3302(c)-1. For provisions relating to the time for filing the return, see § 31.6071(a)-1 in Subpart G of this part.

(3) *Amount of credit allowable when contributions are paid after last day for filing return.* * * *

Example (1). The Federal return of the M Company for the calendar year 1961 discloses total wages of \$400,000. The Federal tax, imposed at the rate of 3.1 percent, is \$12,400. The company is liable for total State contributions of \$8,000 for 1961. The due date of the Federal return is January 31, 1962, no extension of time for filing the return having been granted. The contributions are not paid until February 1, 1962. If the contributions had been paid on or before January 31, 1962, the entire amount of \$8,000 could have been credited against the tax. (Credits could not exceed 2.7 percent of the wages, or \$10,800. See § 31.3302 (c)-1.) Since the contributions were paid after January 31, 1962, the M Company is entitled to a credit of 90 percent of the amount which would have been allowable as credit had the contributions been paid on time (90 percent of \$8,000, or \$7,200), the net liability for Federal tax being \$5,200 (\$12,400 minus \$7,200).

Example (2). The facts are the same as in example (1), except that the M Company is liable for and pays total State contributions of \$12,000, instead of \$8,000. If the contributions had been paid on or before January 31, 1962, the amount allowable as credit would have been \$10,800 (2.7 percent of wages of \$400,000). Since the contributions were paid after January 31, 1962, the M Company is entitled to a credit of 90 percent of \$10,800, or \$9,720, the net liability for Federal tax being \$2,680 (\$12,400 minus \$9,720).

Example (3). The Federal return of the R Company for the calendar year 1961 discloses a total tax of \$3,100. The company is liable for total State contributions of \$2,700 for such year. The due date of the Federal return is January 31, 1962, no extension of time for filing the return having been granted. The R Company pays \$1,700 of the total State contributions on or before such date, and the remaining \$1,000 on February 1, 1962. If the \$1,000 had been paid on or before January 31, 1962, that amount could have been credited against the tax (such amount plus the \$1,700 paid on or before January 31, 1962, not exceeding the aggregate credit allowable). Since the \$1,000 was paid after January 31, 1962, the R Company is entitled to a credit of 90 percent of this amount or \$900, plus the credit of \$1,700 allowable for the contributions paid on or before January 31, 1962. The net liability for Federal tax is thus \$500 (\$3,100 minus \$2,600).

(4) *Amount of credit allowable when contributions are paid to wrong State.* * * *

Example. Employer N, whose Federal return for the calendar year 1961 discloses a total tax of \$3,100, employs individuals in State X and State Y during the calendar year 1961. N assumes in good faith that the services of his employees are covered by the unemployment compensation law of State Y, and pays as contributions to State Y the amount of \$2,700 based upon the remuneration of the employees. All of the services were in fact covered by the unemployment compensation law of State X, and none by the law of State Y. The payment to State Y was made on January 31, 1962. When the error was discovered thereafter, N paid to State X contributions in the amount of \$2,700 based upon such remuneration. Since the contributions were paid to State Y on January 31, 1962, the contributions to State X are, for purposes of the credit, deemed to have been paid on such date. N is entitled to a credit of \$2,700 against the Federal tax of \$3,100, the net liability for Federal tax being \$400 (\$3,100 minus \$2,700).

PAR. 6. Section 31.3302(b)-1 is amended by revising the example in paragraph (b) (1) to read as follows:

§ 31.3302(b)-1 Additional credit against tax.

(b) *Method of computing amount of additional credit allowable with respect to a State law—*(1) *Certification of a State law as a whole.* * * *

Example. A employs individuals only in State X during the calendar year 1955. The unemployment compensation law of State X has been certified in its entirety to the Secretary of the Treasury by the Secretary of Labor for such year. The highest rate applied in such year under such State law to any taxpayer is 3 percent. However, A has obtained a rate of 1 percent under the law of such State and is required to pay his entire year's contribution at that rate. The amount of remuneration of A's employees subject to contributions under such State law is \$25,000. A's additional credit under section 3302(b) is \$425, computed as follows:

Remuneration subject to contributions	\$25,000
Contributions at 2.7 percent rate.....	675
Less:	
Contributions required to be paid at 1 percent rate.....	250
Additional credit to A.....	425

Since the 2.7 percent rate is less than the highest rate applied (3 percent), the 2.7 percent rate is used in computing the amount (\$675) from which the amount of contributions required to be paid at the 1 percent rate (\$250) is deducted in order to ascertain the additional credit (\$425).

PAR. 7. Section 31.3302(c) is amended to read as follows:

§ 31.3302(c) Statutory provisions; credits against tax; limit on total credits.

SEC. 3302. *Credits against tax.* * * *

(c) *Limit on total credits.* (1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act before the date of the enactment of the Employment Security Act of 1960, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A) In the case of a taxable year beginning with the fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(B) In the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State.

(3) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act on or after the date of the enactment of the Employment Security Act of 1960,

then the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A) (i) In the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 10 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(ii) In the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 10 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;

(B) In the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) 2.7 percent, exceeds

(ii) The average employer contribution rate for such State for the calendar year preceding such taxable year; and

(C) In the case of a taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) The 5-year benefit cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds

(ii) The average employer contribution rate for such State for the calendar year preceding such taxable year.

[Sec. 3302(c) as amended by sec. 523(b), Social Security Amendments 1960]

Sec. 522(b). [Social Security Amendments of 1960] * * *

(1) No amount shall be transferred on or after the date of the enactment of this Act from the Federal unemployment account to the account of any State in the Unemployment Trust Fund pursuant to any application made under section 1201(a) of the Social Security Act as in effect before such date; except that, if—

(A) Some but not all of an amount certified by the Secretary of Labor to the Secretary of the Treasury for transfer to the account of any State was transferred to such account before such date, and

(B) The Governor of such State, after the date of the enactment of this Act, requests the Secretary of the Treasury to transfer all or any part of the remainder to such account,

the Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office, transfer from the Federal unemployment account to the account of such State in the Unemployment Trust Fund the amount so requested or (if smaller) the amount available in the Federal unemployment account at the time of the transfer. No such amount shall be transferred under this paragraph after the one-year period beginning on the date of the enactment of this Act.

(2) For purposes of section 3302(c) of the Federal Unemployment Tax Act and titles IX and XII of the Social Security Act, if any amount is transferred pursuant to paragraph (1) to the unemployment account of any State, such amount shall be treated as an

advance made before the date of the enactment of this Act.

Sec. 104. [Temporary Unemployment Compensation Act of 1958 (72 Stat. 173)] The total credits allowed under section 3302(c) of the Federal Unemployment Tax Act (26 U.S.C. 3302(c)) to taxpayers with respect to wages attributable to a State for the taxable year beginning on January 1, 1963, and for each taxable year thereafter, shall be reduced in the same manner as that provided by section 3302(c)(2) of the Federal Unemployment Tax Act for the repayment of advances made under title XII of the Social Security Act, as amended (42 U.S.C. 1321 et seq.), unless or until the Secretary of the Treasury finds that before November 10 of the taxable year there have been restored to the Treasury the amounts of temporary unemployment compensation paid in the State under this Act (except amounts paid to individuals who exhausted their unemployment compensation under title XV of the Social Security Act and title IV of the Veterans' Readjustment Assistance Act of 1952 prior to their making their first claims under this Act), the amount of costs incurred in the administration of this Act with respect to the State, and the amount estimated by the Secretary of Labor as the State's proportionate share of other costs incurred in the administration of this Act.

[Sec. 104 as amended by sec. 524(b), Social Security Amendments 1960]

PAR. 8. Section 31.3302(c)-1 is amended to read as follows:

§ 31.3302(c)-1 Limit on total credits.

(a) *In general.* Paragraph (b) of this section relates to the limitation on the aggregate of the credits allowable under section 3302 (a) and (b). Paragraph (c) of this section relates to reductions, under certain circumstances, of the total credits allowable after applying section 3302 (a), (b), and (c) (1). In paragraph (c) of this section, subparagraphs (1), (2), and (3) relate, respectively, to reductions of credits in respect of advances under title XII of the Social Security Act before September 13, 1960, advances under title XII of the Social Security Act after September 12, 1960, and payments under the Temporary Unemployment Compensation Act of 1958. A reduction of credit under subparagraph (1), (2), or (3) of paragraph (c) of this section applies separately from, and in addition to, a reduction under any other such subparagraph. See section 3302(d) and § 31.3302(d)-1 for definitions and special rules relating to section 3302(c), and for a provision that, in applying section 3302(c), the Federal tax shall be computed at the rate of 3 percent.

(b) *Limitation on aggregate credit.* The aggregate of the credit under section 3302(a) and the additional credit under section 3302(b) shall not exceed 90 percent of the tax against which credit is taken, computed as if the tax were imposed at the rate of 3 percent. Thus, the aggregate of the credit which is allowable to an employer for any taxable year shall not exceed 2.7 percent of the wages paid by the employer during the year.

(c) *Reductions of amount of credit otherwise allowable.*—(1) *Advances before September 13, 1960, under title XII of Social Security Act.* If any balance of an advance or advances under title XII of the Social Security Act, made

before September 13, 1960, to the unemployment account of a State, remains unpaid on January 1 of four consecutive taxable years, the total credits otherwise allowable under section 3302 to a taxpayer subject to the unemployment compensation law of the State shall be reduced for the taxable year beginning with the fourth consecutive January 1, unless prior to November 10 of that taxable year the total amount of any advances made to the account of the State has been fully repaid. The reduction made pursuant to this subparagraph in the total credits otherwise allowable for the taxable year beginning with the fourth consecutive January 1 shall be 0.15 percent of the wages paid by the taxpayer during the taxable year which are attributable to the State (that is, 5 percent of the Federal tax, computed as if imposed at the rate of 3 percent of the wages). In the case of any succeeding taxable year beginning with a consecutive January 1 on which such a balance of an unreturned advance or advances exists, the total credits otherwise allowable shall be reduced unless prior to November 10 of that succeeding taxable year the total amount of any advance or advances made to the account of the State has been fully repaid. The reduction for each such succeeding taxable year beginning with a consecutive January 1 on which such a balance exists shall be a percentage of the wages paid by the taxpayer during that succeeding taxable year which are attributable to the State. The percentage reduction for any such succeeding taxable year shall be the percentage reduction for the immediately preceding taxable year plus 0.15 percent of the wages paid by the taxpayer during the taxable year which are attributable to the State.

Example. If an advance made in 1957 under title XII of the Social Security Act to the unemployment account of State X is fully returned in 1958, but an advance made to the account of State X in 1958 is not fully returned before November 10, 1961, a balance of an advance remains unreturned on January 1 of each of four consecutive taxable years (1958 through 1961), and remains unreturned on November 10, 1961. In this event, the total credits otherwise allowable under section 3302 will be reduced for the taxable year in the case of any taxpayer who in 1961 is subject to the unemployment compensation law of State X. The reduction will be 0.15 percent of the wages paid by the taxpayer during 1961 which are attributable to State X. If a balance continues to exist on January 1, 1962, and if all advances made before September 13, 1960, are not fully returned before November 10, 1962, the total credits will be reduced for the taxable year 1962. The reduction in the total credits for the taxable year 1962 in the case of any taxpayer who in 1962 is subject to the unemployment compensation law of State X will be 0.3 percent (the 0.15 percent reduction in effect for 1961 plus an additional 0.15 percent) of the wages paid by the taxpayer during 1962 which are attributable to State X.

(2) *Advances after September 12, 1960, under title XII of Social Security Act.*—(i) *In general.* If any balance of an advance or advances under title XII of the Social Security Act, made after September 12, 1960, to the unemployment account of a State, remains unpaid on

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January 1 of two consecutive taxable years, the total credits otherwise allowable under section 3302 to a taxpayer subject to the unemployment compensation law of the State shall be reduced for the taxable year beginning with the second consecutive January 1, unless prior to November 10 of that taxable year the total amount of any such advance or advances made to the account of the State has been fully repaid. The reduction made pursuant to this subdivision in the total credits otherwise allowable for the taxable year beginning with the second consecutive January 1 shall be 0.3 percent of the wages paid by the taxpayer during the taxable year which are attributable to the State (that is, 10 percent of the Federal tax, computed as if imposed at the rate of 3 percent of the wages). In the case of any succeeding taxable year beginning with a consecutive January 1 on which there exists such a balance of an unreturned advance or advances made after September 12, 1960, the total credits otherwise allowable shall be further reduced unless prior to November 10 of that succeeding taxable year the total amount of any such advance or advances made to the account of the State has been fully repaid. The reduction for each such succeeding taxable year beginning with a consecutive January 1 on which such a balance exists shall be a percentage of the wages paid by the taxpayer during that succeeding taxable year which are attributable to the State. The percentage reduction for any such succeeding taxable year shall be the aggregate of (a) the percentage reduction (without regard to subdivision (ii) or (iii) of this subparagraph) for the immediately preceding taxable year, (b) 0.3 percent of the wages paid by the taxpayer during the taxable year which are attributable to the State, and (c) the percentage, if any, described in subdivision (ii) or (iii) of this subparagraph.

(ii) *Additional reduction if a balance of advances exists after third or fourth consecutive January 1.* If the credit reduction described in subdivision (i) of this subparagraph is made for the third or fourth consecutive taxable year, the total credits otherwise allowable under section 3302 to a taxpayer subject to the unemployment compensation law of the State shall be further reduced for the taxable year unless the average employer contribution rate (see section 3302 (d) (4)) for such State for the calendar year preceding such taxable year is at least 2.7 percent. The percentage of reduction, if any, under this subdivision shall be the percentage referred to in section 3302(c) (3) (B) which is certified by the Secretary of Labor pursuant to section 3302(d) (7).

(iii) *Additional reduction if a balance of advances exists after fifth or any succeeding consecutive January 1.* If the credit reduction described in subdivision (i) of this subparagraph is made for the fifth or any succeeding taxable year, the total credits otherwise allowable under section 3302 to a taxpayer subject to the unemployment compensation law of the State shall be further reduced for the taxable year unless the average employer contribution rate (see section 3302

(d) (4)) for the State for the calendar year preceding such taxable year equals or exceeds the 5-year benefit cost rate (see section 3302(d) (5)) applicable to the State for the taxable year or 2.7 percent, whichever is higher. The percentage of reduction, if any, under this subdivision for a taxable year shall be the percentage referred to in section 3302(c) (3) (C) which is certified by the Secretary of Labor pursuant to section 3302(d) (7).

(3) *Payments under the Temporary Unemployment Compensation Act of 1958.* If any amount of temporary unemployment compensation was paid in a State under the Temporary Unemployment Compensation Act of 1958, the total credits otherwise allowable under section 3302 to a taxpayer with respect to wages attributable to the State for the taxable year beginning January 1, 1963, and for each taxable year thereafter, shall be reduced unless prior to November 10 of the taxable year there have been restored to the Treasury the amounts of temporary unemployment compensation paid in the State (except amounts paid to individuals who exhausted their unemployment compensation under title XV of the Social Security Act and title IV of the Veterans' Readjustment Assistance Act of 1952 prior to their making their first claims under the Temporary Unemployment Compensation Act of 1958), the amount of costs incurred in the administration of the Temporary Unemployment Compensation Act of 1958 with respect to the State, and the amount estimated by the Secretary of Labor as the State's proportionate share of other costs incurred in the administration of such Act. The reduction for a taxable year shall be a percentage of the wages paid by the taxpayer during the year which are attributable to the State. The percentage for the taxable year 1963 is 0.15 (that is, 5 percent of the Federal tax, computed as if imposed at the rate of 3 percent). The percentage for each succeeding year shall be the percentage reduction for the immediately preceding taxable year plus 0.15 percent. Thus, the percentage under this subparagraph for 1964 is 0.3 (0.15 percent for 1963, plus 0.15 percent).

Example. The cumulative effect of the credit reductions described in this paragraph may be illustrated by the following example: Advances to the unemployment account of State X were made in 1957 and in 1961 under title XII of the Social Security Act. Payments under the Temporary Unemployment Compensation Act of 1958 were made in State X in 1958. None of the advances or payments are returned before November 10, 1964. As a consequence:

(i) The credit reductions described in subparagraph (1) of this paragraph have been made for 1961, 1962, and 1963 (the fourth, fifth, and sixth successive years after 1957), and the rate of credit reduction under subparagraph (1) for 1964 is 0.6 percent;

(ii) The credit reduction described in subparagraph (2) of this paragraph has been made for 1963 (the second successive year after 1961). The rate of credit reduction under subparagraph (2) for 1964 is 1 percent (the aggregate of 0.6 percent under section 3302(c) (3) (A) and 0.4 percent (assumed for purposes of this example to be the percentage referred to in section 3302(c) (3) (B)

which is certified by the Secretary of Labor); and

(iii) The credit reduction described in subparagraph (3) of this paragraph has been made for 1963 at the rate of 0.15 percent. The rate of credit reduction for 1964 is 0.3 percent.

The cumulative rate of credit reduction applicable for 1964 to wages attributable to State X is 1.9 percent, representing the aggregate of the percentage reductions applicable under subparagraphs (1), (2), and (3) of this paragraph (0.6 percent, 1 percent, and 0.3 percent, respectively). In 1964 Employer A paid wages of \$100,000, all of which are subject to the unemployment compensation law of State X. The credit which would be allowable (under section 3302 (a), (b), and (c) (1)) if there were no credit reduction is \$2,700.

Employer A's tax is computed as follows for 1964:

Total taxable wages (attributable to State X)-----	\$100,000
Gross Federal tax (3.1 percent of wages)-----	3,100
Less credit:	
Gross credit-----	\$2,700
Credit reduction (1.9 percent of wages)-----	1,900
Net credit-----	800
Amount of Federal tax due--	2,300

PAR. 9. Immediately after § 31.3302 (c)-1 the following is inserted:

§ 31.3302(d) **Statutory provisions; definitions and special rules relating to limit on total credits.**

SEC. 3302. *Credits against tax. * * **

(d) *Definitions and special rules relating to subsection (c)*—(1) *Rate of tax deemed to be 3 percent.* In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 3 percent in lieu of the rate provided by such section.

(2) *Wages attributable to a particular State.* For purposes of subsection (c), wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary or his delegate) to be attributable to such State.

(3) *Additional taxes inapplicable where advances are repaid before November 10 of taxable year.* Paragraph (2) or (3) of subsection (c) shall not apply with respect to any State for the taxable year if (as of the beginning of November 10 of such year) there is no balance of advances referred to in such paragraph.

(4) *Average employer contribution rate.* For purposes of subparagraphs (B) and (C) of subsection (c) (3), the average employer contribution rate for any State for any calendar year is that percentage obtained by dividing—

(A) The total of the contributions paid into the State unemployment fund with respect to such calendar year, by

(B) The total of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year.

For purposes of subparagraph (C) of subsection (c) (3), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employee payments (if any) into the unemployment fund of such State with respect to such calendar year

which are to be used solely in the payment of unemployment compensation.

(5) *5-year benefit cost rate.* For purposes of subparagraph (C) of subsection (c) (3), the 5-year benefit cost rate applicable to any State for any taxable year is that percentage obtained by dividing—

(A) One-fifth of the total of the compensation paid under the State unemployment compensation law during the 5-year period ending at the close of the second calendar year preceding such taxable year, by

(B) The total of the remuneration subject to contributions under the State unemployment compensation law with respect to the first calendar year preceding such taxable year.

(6) *Rounding.* If any percentage referred to in either subparagraph (B) or (C) of subsection (c) (3) is not a multiple of percent, it shall be rounded to the nearest multiple of 0.1 percent.

(7) *Determination and certification of percentages.* The percentage referred to in subsection (c) (3) (B) or (C) for any taxable year for any State having a balance referred to therein shall be determined by the Secretary of Labor, and shall be certified by him to the Secretary of the Treasury before June 1 of such year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year. Any such State report shall be made as of the close of March 31 of the taxable year, and shall be made on such forms, and shall contain such information, as the Secretary of Labor deems necessary to the performance of his duties under this section.

(8) *Cross reference.* For reduction of total credits allowable under subsection (c), see section 104 of the Temporary Unemployment Compensation Act of 1958.

[Sec. 3302(d) as added by sec. 523(b), Social Security Amendments 1960; and as amended by sec. 14(b), Temporary Extended Unemployment Compensation Act 1961 (75 Stat. 16); sec. 2(b), Act of May 29, 1963 (Pub. Law 88-31, 77 Stat. 51)]

§ 31.3302(d)-1 Definitions and special rules relating to limit on total credits.

(a) *Rate of tax deemed to be 3 percent.* In applying the provisions of section 3302(c) relating to the limitation on total credits, and to reductions of credits otherwise allowable, the tax imposed by section 3301 shall be computed at the rate of 3 percent in lieu of any other rate prescribed in section 3301 (see § 31.3301-3).

(b) *Wages attributable to a particular State.* For purposes of section 3302(c) (2) or (3), wages are attributable to a particular State if they are subject to the unemployment compensation law of the State. If wages are not subject to the unemployment compensation law of any State, the determination as to whether such wages, or any portion thereof, are attributable to the particular State with respect to which the reduction in total credits is imposed shall be made in accordance with rules prescribed by the Commissioner.

(c) *Employment Security Act of 1960.* The Employment Security Act of 1960, referred to in section 3302(c) (2), means title V of the Social Security Amendments of 1960.

§ 31.3302(e) Statutory provisions; successor employer.

Sec. 3302. Credits against tax. * * *

(e) *Successor employer.* Subject to the limits provided by subsection (c), if—

(1) An employer acquires during any calendar year substantially all the property

used in the trade or business of another person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

(2) Such other person is not an employer for the calendar year in which the acquisition takes place,

then, for the calendar year in which the acquisition takes place, in addition to the credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1).

[Sec. 3302(e) as added by sec. 1(a), Act of Sept. 26, 1961 (Pub. Law 87-321, 75 Stat. 683)]

§ 31.3302(e)-1 Successor employer.

(a) *In general.* In addition to the credits against the tax allowable under section 3302 (a) and (b) for any taxable year after 1960, the taxpayer may be entitled to an amount of credit under section 3302(e). Credit under section 3302(e) is provided in the case of a taxpayer who (1) acquires substantially all of the property used in a trade or business, or in a separate unit of a trade or business, of another person (referred to in this section as a predecessor) who is not an employer (see § 31.3306(a)-1) for the calendar year in which the acquisition takes place, and (2) immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of the predecessor.

(b) *Method of computing credit under section 3302(e).* (1) Except as provided in subparagraph (2) of this paragraph, the amount of credit to which the taxpayer may be entitled under section 3302(e) is the amount of credit to which the predecessor would be entitled under section 3302 (a), (b), and (e), without regard to the limits in section 3302(c), if the predecessor were an employer.

(2) If, during the calendar year in which the acquisition takes place, the predecessor pays remuneration, subject to contributions under the unemployment compensation law of a State, to any employee other than the individuals referred to in paragraph (a) of this section, the taxpayer will be entitled only to a portion of the amount of credit described in subparagraph (1) of this paragraph. The portion is determined by multiplying such amount by a fraction. The numerator of the fraction is the total amount of remuneration, subject to such contributions, paid by the predecessor during such year to the individuals referred to in paragraph (a) of this section. The denominator of the fraction is the total amount of remuneration, subject to such contributions, paid by the predecessor during such year to all employees for services performed by

them in the trade or business, or unit thereof, acquired by the taxpayer.

Example. In April 1961 the X Partnership terminated after selling all of its property to the Y Corporation. During 1961, the X Partnership paid its employees and former employees a total of \$1,000,000 as remuneration subject to contributions under the unemployment compensation law of a State. (Note that the X Partnership did not qualify as an employer for 1961 for purposes of the Federal unemployment tax, because it had employees during less than 20 weeks in 1961.) When the Y Corporation acquired the property it concurrently employed all individuals who were then in the employ of the X Partnership. Assume that the X Partnership, if it had qualified as an employer for 1961, would have been entitled to a total credit against the Federal tax of \$30,000 under section 3302 (a) and (b), without regard to the limits in section 3302(c). Of the \$1,000,000 remuneration paid by the X Partnership in 1961, one-fifth (or \$200,000) was paid to individuals who were employed by the Y Corporation at the time it acquired the property of the X Partnership. Under section 3302(e), therefore, the Y Corporation is entitled to credit of \$6,000, which is one-fifth of the credit (\$30,000) which would have been available to the X Partnership.

(3) The aggregate amount of credit allowable to the taxpayer under section 3302 (a), (b), and (e) is subject to the limits in section 3302(c).

(c) *Proof of credit under section 3302(e).* Credit under section 3302(e) shall not be allowed against the tax for any taxable year unless there is submitted to the district director (1) such information or proof as may be called for in the return on which the credit is reported, or in the instructions relating to the return, and (2) such other or additional proof as the Commissioner or the district director may deem necessary to establish the right to the credit provided for under section 3302(e).

(d) *Cross-references.* See paragraph (b) of § 31.3306(b) (1)-1 for examples of the acquisition of property used in a trade or business, or in a separate unit thereof.

PAR. 10. Section 31.3305 is amended by revising subsections (b) and (g) of section 3305, by adding a historical note after section 3305, and by adding after such historical note section 531(g) of the Social Security Amendments of 1960, to read as follows:

§ 31.3305 Statutory provisions; applicability of State law.

Sec. 3305. Applicability of State law. * * *

(b) *Federal instrumentalities in general.* The legislature of any State may require any instrumentality of the United States (other than an instrumentality to which section 3306(c) (6) applies), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U.S.C., sec. 484), and as modified by subsection (c)), to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the in-

dividuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk; (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event such State is not certified by the Secretary of Labor under section 3304 with respect to such year; and (C) only if such State law makes provision for the payment of unemployment compensation to any employee of any such instrumentality of the United States in the same amount, on the same terms, and subject to the same conditions as unemployment compensation is payable to employees of other employers under the State unemployment compensation law.

(g) *Vessels operated by general agents of United States.* The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed on or after July 1, 1953, by officers and members of the crew on or in connection with American vessels—

(1) Owned by or bareboat chartered to the United States, and

(2) Whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States neither wholly nor partially owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

[Sec. 3305 as amended by sec. 531 (a) and (b), Social Security Amendments 1960, effective with respect to remuneration paid after 1961 for services performed after 1961]

SEC. 531. [Social Security Amendments of 1960] ***

(g) Notwithstanding section 203(b) of the Farm Credit Act of 1959 [73 Stat. 390], sections 3305(b), 3306(c) (6), and 3308 of the Internal Revenue Code of 1954 *** shall be applicable, according to their terms, to the Federal land banks, Federal intermediate credit banks, and banks for cooperatives.

PAR. 11. Section 31.3306(b)-1 is amended by revising paragraph (j) (1) to read as follows:

§ 31.3306(b)-1 Wages.

(j) *** (1) Remuneration for services which do not constitute employment under section 3306 (c).

PAR. 12. Section 31.3306(b) (1)-1 is amended by revising paragraph (b) (3) to read as follows:

§ 31.3306(b) (1)-1 \$3,000 limitation.

(b) *Wages paid by predecessor attributed to successor.* ***

(3) The method of acquisition by an employer of the property of another employer is immaterial. The acquisition may occur as a consequence of the incorporation of a business by a sole proprietor or a partnership, the continuance without interruption of the business of a previously existing partnership by a new partnership or by a sole proprietor, or a purchase or any other transaction whereby substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of one employer is acquired by another employer.

PAR. 13. Section 31.3306(b) (5) is amended to read as follows:

§ 31.3306(b) (5) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans.

SEC. 3306. *Definitions.* ***

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(5) Any payment made to, or on behalf of, an employee or his beneficiary—

(A) From or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) Under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a), or

(C) Under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a);

[Sec. 3306(b) (5) as amended by sec. 7(k), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 830)]

PAR. 14. Section 31.3306(b) (5)-1 is amended to read as follows:

§ 31.3306(b) (5)-1 Payments from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans.

(a) *Payments from or to certain tax-exempt trusts.* The term "wages" does not include any payment made—

(1) By an employer, on behalf of an employee or his beneficiary, into a trust, or

(2) To, or on behalf of, an employee or his beneficiary from a trust,

if at the time of such payment the trust is exempt from tax under section 501(a) as an organization described in section 401(a). A payment made to an employee of such a trust for services rendered as an employee of the trust and not as a beneficiary thereof is not within this exclusion from wages.

(b) *Payments under or to certain annuity plans.* (1) The term "wages" does not include any payment made after December 31, 1962—

(i) By an employer, on behalf of an employee or his beneficiary, into an annuity plan, or

(ii) To, or on behalf of, an employee or his beneficiary under an annuity plan,

if at the time of such payment the annuity plan is a plan described in section 403(a).

(2) The term "wages" does not include any payment made before January 1, 1963—

(i) By an employer, on behalf of an employee or his beneficiary, into an annuity plan, or

(ii) To, or on behalf of, an employee or his beneficiary under an annuity plan,

if at the time of such payment the annuity plan meets the requirements of section 401(a) (3), (4), (5), and (6).

(c) *Payments under or to certain bond purchase plans.* The term "wages" does not include any payment made after December 31, 1962—

(1) By an employer, on behalf of an employee or his beneficiary, into a bond purchase plan, or

(2) To, or on behalf of, an employee or his beneficiary under a bond purchase plan,

if at the time of such payment the plan is a qualified bond purchase plan described in section 405(a).

PAR. 15. Section 31.3306(c) is amended to read as follows:

§ 31.3306(c) Statutory provisions; definitions; employment.

SEC. 3306. *Definitions.* ***

(c) *Employment.* For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, except—

[Sec. 3306(c) as amended by sec. 532(a), Social Security Amendments 1960]

PAR. 16. Section 31.3306(c)-2 is amended to read as follows:

§ 31.3306(c)-2 Employment; services performed after 1954.

(a) *In general.* Whether services performed after 1954 constitute employment is determined under subsections (c) and (n) of section 3306.

(b) *Services performed within the United States.* Services performed after 1954 within the United States (see § 31.3306(j)-1) by an employee for the person employing him, unless specifically excepted under section 3306(c), constitute employment. With respect to services performed within the United States, the place where the contract of service is entered into is immaterial. The citizenship or residence of the employee or of the person employing him also is immaterial except to the extent provided in any specific exception from employment. Thus, the employee and the person employing him may be citizens and residents of a foreign country

and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract performs services within the United States, there may be to that extent employment.

(c) *Services performed outside the United States*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, services performed outside the United States (see § 31.3306(j)-1) do not constitute employment.

(2) *On or in connection with an American vessel or American aircraft.* (i) This subparagraph relates to services performed after 1954 "on or in connection with" an American vessel, and to services performed after 1961 "on or in connection with" an American aircraft to the extent that the remuneration for the latter services is paid after 1961. Such services performed outside the United States by an employee for the person employing him constitute employment if:

(a) The employee is also employed "on and in connection with" such vessel or aircraft when outside the United States; and

(b) The services are performed under a contract of service, between the employee and the person employing him, which is entered into within the United States, or during the performance of the contract under which the services are performed and while the employee is employed on the vessel or aircraft it touches at a port within the United States; and

(c) The services are not excepted under section 3306(c). (See particularly § 31.3306(c)(17)-1, relating to fishing.)

(ii) An employee performs services on and in connection with the vessel or aircraft if he performs services on the vessel or aircraft which are also in connection with the vessel or aircraft. Services performed on the vessel by employees as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since the services are also connected with the vessel. Similarly, services performed on the aircraft by employees as officers or members of the crew of the aircraft are performed on and in connection with such aircraft. Services may be performed on the vessel or aircraft, however, which have no connection with it, as in the case of services performed by an employee while on the vessel or aircraft merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(iii) If services are performed by an employee "on and in connection with" an American vessel or American aircraft when outside the United States and the conditions in (b) and (c) of subdivision

(i) of this subparagraph are met, then the services of that employee performed on or in connection with the vessel or aircraft constitute employment. The expression "on or in connection with" refers not only to services performed on the vessel or aircraft but also to services connected with the vessel or aircraft which are not actually performed on it (for ex-

ample, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(iv) Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which and while the employee is employed on the vessel or aircraft it does not touch at a port within the United States, do not constitute employment, notwithstanding that service performed by other members of the crew or other employees on or in connection with the vessel or aircraft may constitute employment.

(v) A vessel includes every description of watercraft, or other contrivance, used as a means of transportation on water. An aircraft includes every description of craft, or other contrivance, used as a means of transportation through the air. In the case of an aircraft, the term "port" means an airport. An airport means an area on land or water used regularly by aircraft for receiving or discharging passengers or cargo. For definitions of "American vessel" and "American aircraft", see § 31.3306(m)-1.

(vi) With respect to services performed outside the United States on or in connection with an American vessel or American aircraft, the citizenship or residence of the employee is immaterial, and the citizenship or residence of the employer is material only in case it has a bearing in determining whether a vessel is an American vessel.

PAR. 17. Paragraphs (a) and (c) of § 31.3306(c)-3 are amended to read as follows:

§ 31.3306(c)-3 Employment; excepted services in general.

(a) Services performed by an employee for the person employing him do not constitute employment for purposes of the tax if they are specifically excepted from employment under any of the numbered paragraphs of section 3306(c). Services so excepted do not constitute employment for purposes of the tax even though they are performed within the United States, or are performed outside the United States on or in connection with an American vessel or American aircraft. If not otherwise provided in the regulations relating to the numbered paragraphs of section 3306(c), such regulations apply with respect to services performed after 1954.

(c) For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see § 31.3306(d)-1.

PAR. 18. Section 31.3306(c)(4) is amended to read as follows:

§ 31.3306(c)(4) Statutory provisions; definitions; employment; services on or in connection with a non-American vessel or aircraft.

Sec. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * *

any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

(4) Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

[Sec. 3306(c)(4) as amended by sec. 532(b), Social Security Amendments 1960]

PAR. 19. Section 31.3306(c)(4)-1 is amended to read as follows:

§ 31.3306(c)(4)-1 Services on or in connection with a non-American vessel or aircraft.

(a) Services performed within the United States by an employee for an employer "on or in connection with" a vessel not an American vessel, or "on or in connection with" an aircraft not an American aircraft, are excepted from employment if the employee is employed by the employer "on and in connection with" the vessel or aircraft when outside the United States.

(b) An employee performs services on and in connection with the vessel or aircraft if he performs services on the vessel or aircraft when outside the United States which are also in connection with the vessel or aircraft. Services performed on the vessel outside the United States by employees as officers or members of the crew, or by employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Similarly, services performed on the aircraft outside the United States by employees as officers or members of the crew of the aircraft are performed on and in connection with such aircraft. Services may be performed on the vessel or aircraft, however, which have no connection with it, as in the case of services performed by an employee while on the vessel or aircraft merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(c) The expression "on or in connection with" refers not only to services performed on the vessel or aircraft but also to services connected with the vessel or aircraft which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(d) The citizenship or residence of the employee and the place where the contract of service is entered into are immaterial for purposes of this exception, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether the vessel is an American vessel. For definitions of the terms "vessel" and "aircraft", see paragraph (c)(2)(v) of § 31.3306(c)-2. For definitions of the terms "American vessel" and "American aircraft", see § 31.3306(m)-1.

(e) Since the only services performed outside the United States which consti-

tute employment are those described in section 3306(c) and paragraph (c) of § 31.3306(c)-2 (relating to services performed outside the United States on or in connection with an American vessel or American aircraft), services performed outside the United States on or in connection with a vessel not an American vessel, or an aircraft not an American aircraft, do not constitute employment in any event.

(f) The provisions of section 3306(c) (4) and of this section, insofar as they relate to services performed on or in connection with an aircraft not an American aircraft, apply only to services performed after 1961 for which remuneration is paid after 1961.

PAR. 20. Section 31.3306(c) (6) is amended to read as follows:

§ 31.3306(c)(6) Statutory provisions; definitions; employment; services in employ of United States Government or instrumentality thereof.

SEC. 3306. Definitions. * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) Wholly or partially owned by the United States, or

(B) Exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

[Sec. 3306(c) (6) as amended by sec. 531(c) Social Security Amendments 1960]

SEC. 531. [Social Security Amendments of 1960] * * *

(g) Notwithstanding section 203(b) of the Farm Credit Act of 1959 [73 Stat. 390], sections 3305(b), 3306(c) (6), and 3308 of the Internal Revenue Code of 1954 * * * shall be applicable, according to their terms, to the Federal land banks, Federal intermediate credit banks, and banks for cooperatives.

PAR. 21. Section 31.3306(c) (6)-1 is amended to read as follows:

§ 31.3306(c) (6)-1 Services in employ of United States or instrumentality thereof.

(a) *Services in employ of United States or wholly-owned instrumentality thereof.* Services performed in the employ of the United States Government, except as provided in section 3306(n) (see § 31.3306(n)-1), are excepted from employment. Services performed in the employ of an instrumentality of the United States which is wholly owned by the United States also are excepted from employment.

(b) *Services in employ of instrumentality not wholly owned by United States—(1) Services performed after 1961.* Services performed after 1961 in the employ of an instrumentality of the United States which is partially owned by the United States are excepted from employment, if the remuneration for such service is paid after 1961. Services performed after 1961 in the employ of an instrumentality of the United States which is neither wholly owned nor par-

tially owned by the United States are excepted from employment if (i) the instrumentality is exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to section 3301 or the corresponding section of prior law in granting exemption from such tax, and (ii) the remuneration for such service is paid after 1961. For provisions which make general exemptions from Federal taxation ineffectual as to the tax imposed by section 3301, see § 31.3308-1.

(2) *Services performed before 1962.* Services performed in the employ of an instrumentality of the United States which is not wholly owned by the United States are excepted from employment if the instrumentality is exempt from the tax imposed by section 3301 by virtue of any other provision of law, and (i) the services are performed before 1962 or (ii) remuneration for the services is paid before 1962.

PAR. 22. Paragraph (b) of § 31.3306(c) (7)-1 is amended to read as follows:

§ 31.3306(c) (7)-1 Services in employ of States or their political subdivisions or instrumentalities.

(b) For provisions relating to the term "State" see § 31.3306(j)-1.

PAR. 23. Section 31.3306(c) (8) is amended to read as follows:

§ 31.3306(c) (8) Statutory provisions; definitions; employment; services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.

SEC. 3306. Definitions. * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

(8) Service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c) (3) which is exempt from income tax under section 501(a);

[Sec. 3306(c) (8) as amended by sec. 533, Social Security Amendments 1960]

PAR. 24. Section 31.3306(c) (8)-1 is amended to read as follows:

§ 31.3306(c) (8)-1 Services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.

(a) *Services performed after 1961.* Services performed by an employee after 1961 in the employ of a religious, charitable, educational, or other organization described in section 501(c) (3) which is exempt from income tax under section 501(a) are excepted from employment, if the remuneration for such service is paid after 1961. For provisions relating to exemption from income tax of an organization described in section 501(c) (3), see Part 1 of this chapter (Income Tax Regulations).

(b) *Services performed before 1962.*

(1) Services performed by an employee in the employ of an organization described in section 3306(c) (8) as in effect before 1962, that is, a corporation, community chest, fund, or foundation, or-

ganized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, are excepted from employment if (i) the services are performed before 1962, or (ii) remuneration for the services is paid before 1962.

(2) Any organization which is an organization of a type described in section 501(c) (3) and which—

(i) Is exempt from income tax under section 501(a), or

(ii) Has been denied exemption from income tax under section 501(a) by reason of the provisions of section 503 or 504, relating to prohibited transactions and to accumulations out of income, respectively,

is an organization of a type described in section 3306(c) (8) as in effect before 1962. An organization which would be an organization of a type described in section 501(c) (3) except for those provisions of section 501(c) (3) which are not contained in section 3306(c) (8) as in effect before 1962 (provisions relating to participation or intervention in a political campaign on behalf of a candidate for public office) is also an organization of a type described in section 3306(c) (8) as in effect before 1962.

PAR. 25. In paragraph (b) of § 31.3306(c) (9)-1, section (1) (i) of the Railroad Unemployment Insurance Act and the historical note are revised to read as follows:

§ 31.3306(c) (9)-1 Railroad industry; services performed by an employee or an employee representative under the Railroad Unemployment Insurance Act.

(b) Section 1 of the Railroad Unemployment Insurance Act (45 U.S.C. 351), as amended, provides, in part, as follows:

(i) The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, paid for services rendered as an employee to one or more employers, or as an employee representative: *Provided, however,* That in computing the compensation paid to any employee, no part of any month's compensation in excess of \$300 for any month before July 1, 1954, or in excess of \$350 for any month after June 30, 1954, and before the calendar month next following the month [May] in which this Act was amended in 1959, or in excess of \$400 for any month after the month [May] in which this Act was so amended, shall be recognized. A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the

employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned.

[Sec. 1, Railroad Unemployment Insurance Act, as amended by secs. 1 and 2, Act of June 20, 1939, 53 Stat. 845; secs. 1 and 3, Act of Aug. 13, 1940, 54 Stat. 785, 786; sec. 15, Act of Apr. 8, 1942, 56 Stat. 210; secs. 1 and 2, Act of July 31, 1946, 60 Stat. 722; sec. 302, Act of Aug. 31, 1954, 68 Stat. 1040; sec. 301, Act of May 19, 1959, Pub. Law 86-28, 73 Stat. 30]

PAR. 26. Sections 31.3306(c)(10)(A); 31.3306(c)(10)(A)-1; 31.3306(c)(10)(B); 31.3306(c)(10)(B)-1; 31.3306(c)(10)(C); 31.3306(c)(10)(C)-1; 31.3306(c)(10)(D); 31.3306(c)(10)(D)-1; 31.3306(c)(10)(E); and 31.3306(c)(10)(E)-1 are deleted.

PAR. 27. Immediately after § 31.3306(c)(9)-1 the following is inserted:

§ 31.3306(c)(10) **Statutory provisions; definitions; employment; services in the employ of certain organizations exempt from income tax, performed in calendar quarter for remuneration less than \$50; services performed in the employ of a school, college, or university by certain students.**

Sec. 3306. **Definitions.** * * *

(c) **Employment.** For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

(10)(A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than \$50, or

(B) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

[Sec. 3306(c)(10) as amended by sec. 534, Social Security Amendments 1960]

§ 31.3306(c)(10)-1 **Services in the employ of certain organizations exempt from income tax.**

(a) **In general.** (1) This section deals with the exception from employment of certain services performed in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401

(a)) or under section 521. (See the provisions of §§ 1.401-1, 1.501(a)-1, and 1.521-1 of this chapter (Income Tax Regulations).) If the services meet the tests set forth in paragraphs (b), (c), (d), or (e) of this section, the services are excepted.

(2) See also § 31.3306(c)(8)-1 for provisions relating to the exception of services performed in the employ of religious, charitable, educational, or certain other organizations exempt from income tax; § 31.3306(c)(10)-2 for provisions relating to the exception of services performed by certain students in the employ of a school, college, or university; and § 31.3306(c)(10)-3 for provisions relating to the exception of services performed before 1962 in the employ of certain employees' beneficiary associations.

(b) **Remuneration less than \$50 for calendar quarter.** Services performed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 are excepted from employment, if the remuneration for the service is less than \$50. The test relating to remuneration of \$50 is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter.

Example (1). X is a local lodge of a fraternal organization and is exempt from income tax under section 501(a) as an organization of the character described in section 501(c)(8). X has a number of paid employees, among them being A who serves exclusively as recording secretary for the lodge, and B who performs services for the lodge as janitor of its clubhouse. For services performed during the first calendar quarter of 1955 (that is, January 1, 1955, through March 31, 1955, both dates inclusive) A earns a total of \$30. For services performed during the same calendar quarter B earns \$180. Since the remuneration for the services performed by A during such quarter is less than \$50, all of such services are excepted. Thus, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer (see § 31.3306(a)-1). Even though it is subsequently determined that X is an employer, A's remuneration of \$30 for services performed during the first calendar quarter of such year is not subject to tax. B's services, however, are not excepted during such quarter since the remuneration therefor is not less than \$50. Thus, B is counted as an employee in employment during all of such quarter for purposes of determining whether the X organization is an employer. If it is determined that the X organization is an employer, B's remuneration of \$180 for services performed during the first calendar quarter is included in computing the tax.

Example (2). The facts are the same as in example (1), above, except that on April 1, 1955, A's salary is increased and, for serv-

ices performed during the calendar quarter beginning on that date (that is, April 1, 1955, through June 30, 1955, both dates inclusive), A earns \$60. Although all of the services performed by A during the first quarter were excepted, none of A's services performed during the second quarter are excepted since the remuneration for such services is not less than \$50. A, therefore, is counted as an employee in employment during all of the second quarter for the purpose of determining whether the X organization is an employer. If it is determined that the X organization is an employer, A's remuneration of \$60 for services performed during the second calendar quarter is included in computing the tax.

Example (3). The facts are the same as in example (1), above, except that A earns \$120 for services performed during the year 1955, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the \$120 attributable to services performed in that quarter is less than \$50. In such case, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer. If, however, the portion of the \$120 attributable to services performed in any calendar quarter during the year is not less than \$50, the services during that quarter are not excepted. In the latter case, A is counted as an employee in employment during all of such quarter and, if it is determined that the X organization is an employer, that portion of the \$120 attributable to services performed in such quarter is included in computing the tax.

(c) **Collection of dues or premiums for fraternal beneficiary societies, and ritualistic services in connection with such societies, before 1962.** The following services performed by an employee in the employ of a fraternal beneficiary society, order, or association exempt from income tax under section 501(a) are excepted from employment if the services are performed before 1962 or if remuneration for the services is paid before 1962:

(1) Services performed away from the home office of such a society, order, or association in connection with the collection of dues or premiums for such society, order, or association; and

(2) Ritualistic services (wherever performed) in connection with such a society, order, or association.

For purposes of this paragraph the amount of the remuneration for services performed by the employee in the calendar quarter is immaterial; the tests are the character of the organization in whose employ the services are performed, the type of services, and, in the case of collection of dues or premiums, the place where the services are performed.

(d) **Students employed before 1962.**

(1) Services performed in the employ of an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 by a student who is enrolled and is regularly attending classes at a school, college, or university, are excepted from employment if the services are performed before 1962 or if remuneration for the services is paid before 1962. For purposes of this paragraph, the amount of remuneration for services performed by the employee in

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the calendar quarter, the type of services, and the place where the services are performed are immaterial; the tests are the character of the organization in whose employ the services are performed and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

(2) The term "school, college, or university" as used in this paragraph is to be taken in its commonly or generally accepted sense. For provisions relating to services performed before 1962 by a student enrolled and regularly attending classes at a school, college, or university not exempt from income tax in the employ of such school, college, or university, see paragraph (b) of § 31.3306(c)(10)-2. For provisions relating to services performed after 1961 by a student enrolled and regularly attending classes at a school, college, or university in the employ of such school, college, or university, see paragraph (a) of § 31.3306(c)(10)-2.

(c) *Services performed before 1962 in employ of agricultural or horticultural organization exempt from income tax.*

(1) Services performed by an employee in the employ of an agricultural or horticultural organization which is described in section 501(c)(5) and the regulations thereunder and which is exempt from income tax under section 501(a) are excepted from employment if the services are performed before 1962 or if remuneration for the services is paid before 1962.

(2) For purposes of this paragraph, the type of services performed by the employee, the amount of remuneration for the services, and the place where the services are performed are immaterial; the test is the character of the organization in whose employ the services are performed.

§ 31.3306(c)(10)-2 Services of student in employ of school, college, or university.

(a) *Services performed after 1961.* Services performed after 1961 in the employ of a school, college, or university, by a student who is enrolled and is regularly attending classes at the school, college, or university, are excepted from employment (whether or not the school, college, or university is exempt from income tax), if remuneration for the services is paid after 1961.

(b) *Services performed before 1962.* Services performed in the employ of a school, college, or university not exempt from income tax under section 501(a), by a student who is enrolled and is regularly attending classes at the school, college, or university, are excepted from employment if the services are performed before 1962 or if remuneration for the services is paid before 1962.

(c) *Application of section.* (1) For purposes of this section, the type of services performed by the employee, the place where the services are performed, and the amount of remuneration for services performed by the employee are immaterial; the tests are the character of the organization in the employ of which the services are performed and

the status of the employee as a student enrolled and regularly attending classes at the school, college, or university in the employ of which he performs the services.

(2) The status of the employee as a student performing the services shall be determined on the basis of the relationship of such employee with the organization for which the services are performed. An employee who performs services in the employ of a school, college, or university as an incident to and for the purpose of pursuing a course of study at such school, college, or university has the status of a student in the performance of such services.

(3) The term "school, college, or university" as used in this section is to be taken in its commonly or generally accepted sense.

(4) For provisions relating to services performed before 1962 by a student in the employ of an organization exempt from income tax, see paragraph (d) of § 31.3306(c)(10)-1.

§ 31.3306(c)(10)-3 Services before 1962 in employ of certain employees' beneficiary associations.

(a) *Voluntary employees' beneficiary associations.* Services performed by an employee in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents are excepted from employment if—

(1) No part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual,

(2) 85 percent or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses, and

(3) The services are performed before 1962, or remuneration for the services is paid before 1962.

(b) *Federal employees' beneficiary associations.* Services performed by an employee in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries are excepted from employment if—

(1) Admission to membership in the association is limited to individuals who are officers or employees of the United States Government,

(2) No part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual, and

(3) The services are performed before 1962, or remuneration for the services is paid before 1962.

(c) *Application of tests.* For purposes of this section, the type of services performed by the employee, the amount of remuneration for the services, and the place where the services are performed are immaterial; the test is the character of the organization in whose employ the services are performed.

PAR. 28. Section 31.3306(c)(16) is amended to read as follows:

§ 31.3306(c)(16) Statutory provisions; definitions; employment; services in employ of international organization.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

(16) Service performed in the employ of an international organization;

[Sec. 3306(c)(16) as amended by sec. 110(f)(1), Mutual Educational and Cultural Exchange Act 1961 (75 Stat. 537)]

PAR. 29. Section 31.3306(c)(17) is amended to read as follows:

§ 31.3306(c)(17) Statutory provisions; definitions; employment; fishing services.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

(17) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity) except—

(A) Service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) Service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States); or

[Sec. 3306(c)(17) as amended by sec. 110(f)(2), Mutual Educational and Cultural Exchange Act 1961 (75 Stat. 537)]

PAR. 30. Immediately after § 31.3306(c)(17)-1 the following is inserted:

§ 31.3306(c)(18) Statutory provisions; definitions; employment; services of certain nonresident aliens.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

(18) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.

[Sec. 3306(c)(18) as added by sec. 110(f)(3), Mutual Educational and Cultural Exchange Act 1961 (75 Stat. 537)]

§ 31.3306(c)(18)-1 Services of certain nonresident aliens.

(a) (1) Services performed after 1961 by a nonresident alien individual who is

temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101), as amended, are excepted from employment if the services are performed to carry out a purpose for which the individual was admitted. For purposes of this section an alien individual who is temporarily present in the United States as a nonimmigrant under such subparagraph (F) or (J) is deemed to be a nonresident alien individual. A nonresident alien individual who is temporarily present in the United States as a nonimmigrant under such subparagraph (J) includes an alien individual admitted to the United States as an "exchange visitor" under section 201 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1446).

(2) If services are performed by a nonresident alien individual's alien spouse or minor child, who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, the services are not deemed for purposes of this section to be performed to carry out a purpose for which such individual was admitted. The services of such spouse or child are excepted from employment under this section only if the spouse or child was admitted for a purpose specified in such subparagraph (F) or (J) and if the services are performed to carry out such purpose.

(b) Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101), as amended, provides, in part, as follows:

SEC. 101. *Definitions.* [Immigration and Nationality Act (66 Stat. 166)]

(a) As used in this chapter—

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(F) (i) An alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by him and approved by the Attorney General after consultation with the Office of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;

(J) An alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Secretary of State, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting,

demonstrating special skills, or receiving training, and the alien spouse and minor children of any such alien if accompanying him or following to join him.

[Sec. 101, Immigration and Nationality Act, as amended by sec. 101, Act of June 27, 1952, 66 Stat. 166; sec. 109, Act of Sept. 21, 1961, 75 Stat. 534]

PAR. 31. Section 31.3306(j) is amended to read as follows:

§ 31.3306(j) *Statutory provisions; definitions; State, United States, and citizen.*

SEC. 3306. *Definitions.* * * *

(j) *State, United States, and citizen.* For purposes of this chapter—

(1) *State.* The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

(2) *United States.* The term "United States" when used in a geographical sense includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered for purposes of this section, as a citizen of the United States.

[Sec. 3306(j) as amended by sec. 22(a), Alaska Omnibus Act (73 Stat. 146); sec. 18(d), Hawaii Omnibus Act (74 Stat. 416); sec. 543(a), Social Security Amendments 1960]

PAR. 32. Immediately after § 31.3306(j) the following is inserted:

§ 31.3306(j)-1 *State, United States, and citizen.*

(a) When used in the regulations in this subpart, the term "State" includes the District of Columbia, the Territories of Alaska and Hawaii before their admission as States, and (when used with respect to remuneration paid after 1960 for services performed after 1960) the Commonwealth of Puerto Rico.

(b) When used in the regulations in this subpart, the term "United States", when used in a geographical sense, means the several States (including the Territories of Alaska and Hawaii before their admission as States), and the District of Columbia. When used in the regulations in this subpart with respect to remuneration paid after 1960 for services performed after 1960, the term "United States" also includes the Commonwealth of Puerto Rico when the term is used in a geographical sense, and the term "citizen of the United States" includes a citizen of the Commonwealth of Puerto Rico.

PAR. 33. Section 31.3306(m) is amended to read as follows:

§ 31.3306(m) *Statutory provisions; definitions; American vessel and aircraft.*

SEC. 3306. *Definitions.* * * *

(m) *American vessel and aircraft.* For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the

term "American aircraft" means an aircraft registered under the laws of the United States.

[Sec. 3306(m) as amended by sec. 532(c), Social Security Amendments 1960]

PAR. 34. Section 31.3306(m)-1 is amended to read as follows:

§ 31.3306(m)-1 *American vessel and aircraft.*

(a) The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented nor numbered under the laws of the United States, nor documented under the laws of any foreign country, if the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State. (For provisions relating to the terms "State" and "citizen", see § 31.3306(j)-1.)

(b) The term "American aircraft" means any aircraft registered under the laws of the United States.

(c) For provisions relating to services performed outside the United States on or in connection with an American vessel or American aircraft, see paragraph (c) of § 31.3306(c)-2.

PAR. 35. Section 31.3308 is redesignated as § 31.3309 and as so redesignated reads as follows:

§ 31.3309 *Statutory provisions; short title.*

SEC. 3309. *Short title.* This chapter may be cited as the "Federal Unemployment Tax Act."

[Sec. 3309 as redesignated by sec. 531(d)(1), Social Security Amendments 1960]

PAR. 36. Immediately after § 31.3307-1 the following is inserted:

§ 31.3308 *Statutory provisions; instrumentalities of the United States.*

SEC. 3308. *Instrumentalities of the United States.* Notwithstanding any other provision of law (whether enacted before or after enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3301 unless such other provision of law grants a specific exemption, by reference to section 3301 (or the corresponding section of prior law), from the tax imposed by such section.

[Sec. 3308 as added by sec. 531(d)(1), Social Security Amendments 1960]

SEC. 531. [Social Security Amendments of 1960] * * *

(g) Notwithstanding section 203(b) of the Farm Credit Act of 1959 [73 Stat. 390], sections 3305(b), 3306(c)(6), and 3308 of the Internal Revenue Code of 1954 * * * shall be applicable, according to their terms, to the Federal land banks, Federal intermediate credit banks, and banks for cooperatives.

§ 31.3308-1 *Instrumentalities of the United States specifically exempted from tax imposed by section 3301.*

Section 3308 makes ineffectual as to the tax imposed by section 3301 (with respect to remuneration paid after 1961 for services performed after 1961) those

provisions of law which grant to an instrumentality of the United States an exemption from taxation, unless such provisions grant a specific exemption from the tax imposed by section 3301 by an express reference to such section or the corresponding section of prior law. Thus, the general exemptions from Federal taxation granted by various statutes to certain instrumentalities of the United States without specific reference to the tax imposed by section 3301 or the corresponding section of prior law are rendered inoperative insofar as such exemptions relate to the tax imposed by section 3301. For provisions relating to the exception from employment of services performed in the employ of an instrumentality of the United States specifically exempted from the tax imposed by section 3301, see § 31.3306 (c) (6)-1.

PAR. 37. Section 31.6001-4 is amended by revising paragraph (b) to read as follows:

§ 31.6001-4 Additional records under Federal Unemployment Tax Act.

(b) *Records of persons who are not employers.* Any person who employs individuals in employment (see §§ 31.3306 (c)-1 to 31.3306(c)-3, inclusive) during any calendar year but who considers that he is not an employer subject to the tax (see § 31.3306(a)-1) shall, with respect to each such year, be prepared to establish by proper records (including, where necessary, records of the number of employees employed each day) that he is not an employer subject to the tax.

[F.R. Doc. 63-6795; Filed, June 26, 1963; 8:54 a.m.]

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES
[T.D. 6660]

PART 45—MISCELLANEOUS STAMP TAXES

Miscellaneous Amendments

In order to conform the Miscellaneous Stamp Tax Regulations (26 CFR Part 45) to sections 201 and 202 of the Act of June 4, 1963 (Public Law 88-36, 77 Stat. 54), such regulations are amended as follows:

PARAGRAPH 1, Paragraph (i) of § 45.0-3 is amended to read as follows:

§ 45.0-3 Scope of regulations.

(i) *Subpart J.* The regulations in Subpart J of this part relate to transfers of any interest in silver bullion made on or after July 1, 1960, and before June 5, 1963.

PAR. 2. Section 45.4891 is amended by revising the historical note. The revised historical note reads as follows:

§ 45.4891 Statutory provisions; imposition of tax.

SEC. 4891. *Imposition of tax.* * * *

[Sec. 4891 as originally enacted and in effect with respect to transfers of any interest in

silver bullion made before June 5, 1963; repealed by sec. 201, Act of June 4, 1963 (Public Law 88-36, 77 Stat. 54)]

PAR. 3. Paragraph (a) of § 45.4891-1 is amended to read as follows:

§ 45.4891-1 Imposition of tax.

(a) *Transfers subject to tax.* The tax applies to all transfers on or before June 4, 1963, within the scope of the tax as set forth in § 45.4896-1, of any interest in silver bullion, if the price for which such interest is or is to be transferred exceeds the cost thereof and the allowed expenses, unless the transfer is specifically exempted. As to exempt transfers, see paragraph (c) of § 45.4896-1.

PAR. 4. Section 45.4892 is amended by revising the historical note. The revised historical note reads as follows:

§ 45.4892 Statutory provisions; definitions.

SEC. 4892. *Definitions.* * * *

[Sec. 4892 as originally enacted and in effect with respect to transfers of any interest in silver bullion made before June 5, 1963; repealed by sec. 201, Act of June 4, 1963 (Public Law 88-36, 77 Stat. 54)]

PAR. 5. Section 45.4893 is amended by revising the historical note. The revised historical note reads as follows:

§ 45.4893 Statutory provisions; liability for tax.

SEC. 4893. *Liability for tax.* * * *

[Sec. 4893 as originally enacted and in effect with respect to transfers of any interest in silver bullion made before June 5, 1963; repealed by sec. 201, Act of June 4, 1963 (Public Law 88-36, 77 Stat. 54)]

PAR. 6. Section 45.4894 is amended by revising the historical note. The revised historical note reads as follows:

§ 45.4894 Statutory provisions; abatement or refund.

SEC. 4894. *Abatement or refund.* * * *

[Sec. 4894 as originally enacted and in effect with respect to transfers of any interest in silver bullion made before June 5, 1963; repealed by sec. 201, Act of June 4, 1963 (Public Law 88-36, 77 Stat. 54)]

PAR. 7. Section 45.4895 is amended by revising the historical note. The revised historical note reads as follows:

§ 45.4895 Statutory provisions; stamps, memorandum, etc.

SEC. 4895. *Stamps.* * * *

[Sec. 4895 as originally enacted and in effect with respect to transfers of any interest in silver bullion made before June 5, 1963; repealed by sec. 201, Act of June 4, 1963 (Public Law 88-36, 77 Stat. 54)]

PAR. 8. Section 45.4896 is amended by revising the historical note. The revised historical note reads as follows:

§ 45.4896 Statutory provisions; applicability of tax.

SEC. 4896. *Applicability.* * * *

[Sec. 4896 as originally enacted and in effect with respect to transfers of any interest in silver bullion made before June 5, 1963; repealed by sec. 201, Act of June 4, 1963 (Public Law 88-36, 77 Stat. 54)]

PAR. 9. Section 45.4897 is amended by revising the historical note. The revised historical note reads as follows:

§ 45.4897 Statutory provisions; cross references.

SEC. 4897. *Cross references.* * * *

[Sec. 4897 as originally enacted and in effect with respect to transfers of any interest in silver bullion made before June 5, 1963; repealed by sec. 201, Act of June 4, 1963 (Public Law 88-36, 77 Stat. 54)]

Because this Treasury decision relates to the repeal of the tax on transfers of an interest in silver bullion, it is hereby found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: June 21, 1963.

STANLEY S. SURREY,
Assistant Secretary of the
Treasury.

[F.R. Doc. 63-6799; Filed, June 26, 1963; 8:54 a.m.]

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER C—SPECIAL PROGRAMS

[Amdt. 59]

PART 750—SOIL BANK

Subpart—Conservation Reserve Program for 1956 Through 1959

The regulations governing the Conservation Reserve Program for 1960, 24 F.R. 6289, as amended, are hereby further amended as follows: Section 750.150(e) is amended by changing the definition of the term "Deputy Administrator" to read as follows:

(e) "Deputy Administrator" means the Deputy Administrator or Acting Deputy Administrator for State and County Operations, Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

(Sec. 124, 70 Stat. 198; U.S.C. 1812)

Effective date: Date of signature.

Signed at Washington, D.C., on June 20, 1963.

RAY FITZGERALD,
Acting Administrator, Agricultural Stabilization and Conservation Service.

JUNE 20, 1963.

[F.R. Doc. 63-6784; Filed, June 26, 1963; 8:51 a.m.]

[Amdt. 24]

PART 750—SOIL BANK**Subpart—Conservation Reserve Program for 1960**

The regulations governing the Conservation Reserve Program for 1960, 24 F.R. 7987, as amended, are hereby further amended as follows: Section 750.501 (d) is amended by changing the definition of the term "Deputy Administrator" to read as follows:

(d) "Deputy Administrator" means the Deputy Administrator or Acting Deputy Administrator for State and County Operations, Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

(Sec. 124, 70 Stat. 198; 7 U.S.C. 1812)

Effective date: Date of signature.

Signed at Washington, D.C., on June 20, 1963.

RAY FITZGERALD,
Acting Administrator, Agricultural Stabilization and Conservation Service.

JUNE 20, 1963.

[F.R. Doc. 63-6785; Filed, June 26, 1963; 8:51 a.m.]

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER F—DETERMINATION OF NORMAL YIELDS AND ELIGIBILITY FOR ABANDONMENT AND CROP DEFICIENCY PAYMENTS

[Sugar Determination 845.2; Supp. 2]

PART 845—MAINLAND CANE SUGAR AREA

Approved Local Areas for 1962 Crop
§ 845.4 Approved local areas for the 1962 crop.

For purposes of considering eligibility of farms for abandonment and crop deficiency payments on 1962-crop sugarcane pursuant to paragraph (c) of § 845.2, as amended, the local ASC parish committees in Louisiana and the ASC Glades County Committee in Florida have determined that the extent of crop damage as specified and provided in subparagraph (1) (iii) of paragraph (c) of § 845.2 has occurred in the following parishes and local producing area:

LOUISIANA

PARISHES APPROVED IN THEIR ENTIRETY

Ascension.	St. James.
Assumption.	St. John.
Avoyelles.	St. Landry.
Iberia.	St. Martin.
Iberville.	St. Mary.
Lafayette.	Terrebonne.
Lafourche.	Vermillion.
Pointe Coupee.	West Baton Rouge.
Rapides.	West Feliciana.
St. Charles.	

FLORIDA

All of Florida.

Statement of bases and considerations. This supplement provides public notice

No. 125—3

of the parishes and local producing areas in Louisiana and Florida where due to drought, flood, storm, freeze, disease or insects, the 1962 sugarcane crop has been damaged to the extent that farms located in whole or in part therein will be considered (as to location) for abandonment or deficiency payments. Producers on these farms who have not filed applications for Sugar Act payments with respect to acreage abandonment or crop deficiencies for which they may otherwise be eligible should apply for such payments before June 30, 1964, as provided in 7 CFR 855.9 (26 F.R. 10268).

(Sec. 403, 61 Stat. 923; 7 U.S.C. 1153. Interprets or applies secs. 301, 302, 61 Stat. 929, 930, as amended; 7 U.S.C. 1131, 1132; Pub. Law 87-535 approved July 13, 1962)

Effective date: Date of publication.

Signed at Washington, D.C. on June 21, 1963.

RAY FITZGERALD,
Deputy Administrator,
State and County Operations.

[F.R. Doc. 63-6783; Filed, June 26, 1963; 8:50 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Reg. Docket No. 380; Special Civil Air Regulation No. SR-442A]

PART 60—AIR TRAFFIC RULES

Special Civil Air Regulation; New York International Airport Traffic Area Rules

By Special Civil Air Regulation No. SR-442 (25 F.R. 8538), effective October 15, 1960, special airport traffic pattern rules were established for flight operations conducted within five miles of the New York International Airport at altitudes extending up to, but not including, 2,000 feet above the surface. SR-442 also established certain limited rules for Floyd Bennett Naval Air Station. It was promulgated to enhance the safety of flight in the New York area and to minimize aircraft noise disturbance to persons on the ground, pending the adoption of an air traffic regulation of general applicability for the same purposes.

On September 22, 1961, Amendment 60-24 (26 F.R. 9069), effective December 26, 1961, was adopted. It amended § 60.18 of the Civil Air Regulations to establish certain air traffic rules designed to standardize flight procedures at controlled airports and, to the extent practicable, provide for a uniform application of traffic pattern rules. Much of the substance of SR-442 was incorporated in these rules. In addition, the amended § 60.18 authorizes the development of mandatory local preferential runway procedures such as those presently specified in SR-442. Therefore, § 60.18 renders superfluous and unnecessary much of the regulatory content of SR-442.

SR-442 contains certain rules governing aircraft operations to and from Floyd Bennett Naval Air Station and prescribes traffic pattern altitudes for aircraft entering the New York International Airport Traffic Area. Retention of these provisions is considered necessary as they are not covered by § 60.18.

The Agency originally intended to drop the surplus material in SR-442 in the process of its recodification and it was so proposed in Subpart B of Part 93 (New) in the recodification notice of proposed rule making on Subchapter F—Air Traffic and General Operating Rules, published in the FEDERAL REGISTER on February 1, 1963 (28 F.R. 1003), and circulated in Draft Release No. 63-3. It has since been determined, however, that the surplus material should be deleted sooner than would be possible under the recodification program.

Since this amendment eliminates duplicative requirements and imposes no additional burden on any person, compliance with the notice, public procedure and effective date requirements of the Administrative Procedure Act is unnecessary.

In view of the foregoing, Special Civil Air Regulation No. SR-442 is rescinded and a Special Civil Air Regulation No. SR-442A, reading as follows, is adopted effective June 27, 1963:

NEW YORK INTERNATIONAL AIRPORT TRAFFIC AREA RULES

Unless otherwise authorized by air traffic control, each person operating an aircraft in the New York International Airport Traffic Area shall operate it in accordance with the following special air traffic rules in addition to other applicable rules.

1. New York International Airport Traffic.

Except when the VFR clearance-from-clouds require otherwise, when landing at New York International Airport, each person piloting—

(a) An airplane of 12,500 or more pounds (maximum certificated take-off weight) shall enter the New York International Airport Traffic Area at an altitude of at least 1,500 feet above the surface and maintain that altitude so long as practicable before landing; and

(b) An airplane of less than 12,500 pounds (maximum certificated take-off weight) shall enter the New York International Airport Traffic Area at an altitude of at least 1,200 feet above the surface and after entry shall maintain an altitude of at least 1,000 feet, but not more than 1,200 feet, above the surface so long as practicable before landing.

2. Landings at Runway 19 or 24 of the Floyd Bennett Naval Air Station.

Each person piloting an airplane landing on Runway 19 or 24 of Floyd Bennett Naval Air Station shall operate at or below an altitude of 800 feet above the surface in that portion of the Floyd Bennett Naval Air Station traffic pattern that extends into the New York International Airport Traffic Area.

(Secs. 313(a) and 307 of the Federal Aviation Act of 1958, 72 Stat. 752, 749, 49 U.S.C. 1354, 1348)

Issued in Washington, D.C., on June 21, 1963.

N. E. HALABY,
Administrator.

[F.R. Doc. 63-6770; Filed, June 26, 1963; 8:46 a.m.]

RULES AND REGULATIONS

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 1723 Amdt. 580]

PART 507—AIRWORTHINESS
DIRECTIVESBoeing Models 707 and 720 Series
Aircraft

A proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring replacement of the two-piece fuel tank adapters on the pressure fueling receptacles with one-piece adapters on Boeing Models 707 and 720 Series aircraft was published in 28 F.R. 4306.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

BOEING. Applies to all Models 707 and 720 Series aircraft.

Compliance required within the next 2,000 hours' time in service after the effective date of this AD unless already accomplished.

There have been a number of instances of separation of the two-piece fuel tank adapter, Boeing P/N 10-3062-1, during pressure fueling. This has resulted in a potentially hazardous fire condition from spillage of fuel.

To prevent further fuel spillage from this cause, replace the two-piece fuel tank adapter, Boeing P/N 10-3062-1, with the one-piece fuel tank adapter, Boeing P/N 10-3062-2, on the pressure fueling receptacles. (Boeing Service Bulletin No. 715 covers this subject.)

(Secs. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

This amendment shall become effective July 29, 1963.

Issued in Washington, D.C., on June 20, 1963.

W. LLOYD LANE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 63-6771; Filed, June 26, 1963;
8:46 a.m.]

Title 46—SHIPPING

Chapter III—Great Lakes Pilotage
Administration, Department of
CommercePART 403—GREAT LAKES PILOTAGE
UNIFORM ACCOUNTING SYSTEMInterassociation Settlements and
Accounting Records

Sections of Uniform Accounting System pertaining to Inter-Association Settlements and Accounting Records are amended to reflect change in basis of billing for services by United States and Canadian Registered Pilots as follows:

Inter-Association Settlements

10. GENERAL

1. Under the Memorandum of Arrangements between the Secretary of Commerce of the United States and the Minister of Transport of Canada it was agreed that settlement of accounts between United States Pools and Canadian Pools will be effected on an interim basis

as of the end of each month with an annual settlement as of December 31 of each year. Payments on account will be made by the 15th of the following month.

2. *Pro Forma Settlement Statement.* The following settlement statement will be made monthly by United States associations operating dispatching and accounting services:

		REVENUE		Current month	Year-to-date
4100	Pilotage revenue:			\$	\$
	United States pilots				
	Canadian pilots				
	Total				
		OPERATING EXPENSES			
5140	Subsistence and travel—pilots				
5415	Employees' salaries and benefits				
5420	Rental office space and equipment				
5430	Heat, light, and power				
5445	Office stationery and supplies				
5450	Repairs office equipment				
5460	Administrative travel				
5465	Telephone, telegraph, and teletype				
5470	Insurance and bonding				
5475	Postage and express				
5490	Bank service charges				
5495	Other				
5540	Bad debt allowance				
	Total				
	Net operating income				
	Less: Outstanding accounts receivable				
	Amount available for distribution				
	Total pilotage revenue billed	U.S.	Canada		Total
	Respective share of amount available	\$	\$	\$	
STATEMENT OF ACCOUNT AS AT (End of month)					
	Share to date	U.S. share	Canada share		Total share
	Boat and taxi charges paid	\$	\$		\$
	Payments made to				
	(End of month)				
	Distribution this period				
	Undistributed balance				

3. *Pro Forma Journal Entries—Account 4100 Pilotage Revenue* will be supported by copies of invoices prepared by issuing offices.

Account 5140 Subsistence and Travel Expense will be supported by listings giving the pilot's name and amount. The travel expenses recorded in this account are only those provided for under paragraph 4(c) of the Canada-United States Memorandum of Arrangements and which are recoverable from operators of vessels.

Account 5415 Employees' Salaries and Wages, Payroll Taxes Etc. will be supported by list showing employees' name, title and salary. (Only employees directly engaged in dispatching and accounting activities are included.)

Account 5420 Rents and Leases will include agreed amount of rental for office space and necessary equipment.

Account 5430 Heat, Light, and Power will be supported by listing of utilities and amounts.

Account 5465 Telephone, Telegraph, and Teletype will be supported by listing of supplier and amounts.

Accounts 5445, 5450, 5460, 5470, 5475, 5490, 5495, and 5540 do not require supporting data.

The following entries will be made upon receipt of settlement statement:

Account No.	Association's share	
	Debit	Credit
1250	\$	\$
5140		
5230		
5415		
5420		
5430		
5445		
5460		
5465		
5475		
5490		
5495		
5540		
4100		

To record Association's share of revenue and expenses transferred from other Associations. (The debits and credits will be determined by multiplying the current month totals shown on the settlement statement by the Association's pro-rata share and then in turn multiplying the result by the exchange rate.)

1010	\$	\$
1250		

To record cash received (in United States currency).

Journal entries to record transactions from settlement statements prepared by United States Associations will be as follows:

Account No.	Debit	Credit
4100		
2050		
5140		
5230		
5415		
5420		
5430		
5445		
5450		
5460		
5465		
5470		
5475		
5490		
5495		
5540		

To eliminate Canadian Pilot Pool's share of Revenue and Expense based on pro-rata share.

2050	\$	\$
1010		

To record payment to Canadian Pilots' Pool.

Accounting Records

14. UNIFORM PILOTS SOURCE FORM

The "Pilot's Source Form—Great Lakes Pilotage" is approved for use by pilots in Great Lakes Districts Nos. 1, 2, and 3. This form is to be issued to pilots by authorized United States pilotage pools and changes shall not be made in the format thereof unless authorized by the Great Lakes Pilotage Administration.

Pilots shall complete forms in detail as soon as possible after completion of assignment and return entire set to dispatching office, together with adequate support for reimbursable travel expense.

Upon receipt by the pilot association the forms shall be completed by insertion of rates and charges as specified in the Great Lakes Pilotage Regulations (46 CFR Part 401). The discount for Canadian pilots due to exchange differential shall be reflected as a separate item. The amount of discount shall be based on the United States dollar parity rate as may be established from time to time by the Minister of Finance of Canada.

Copies of the form shall be distributed as follows:

- Original to accompany invoice;
- First carbon to Administration for statistical purposes;
- Second carbon to billing office for accounting record;
- Third carbon to pilot's own Association for pilot's personal record;
- Fourth carbon to corresponding Canadian Association or agency for office use.

Associations shall account by number for all pilot source forms issued.

Dated: April 15, 1963.

[SEAL]

A. T. MESCHTER,
Administrator.

[F.R. Doc. 63-6713; Filed, June 26, 1963;
8:45 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 61—MONEY ORDERS

PART 112—RATES AND CONDITIONS FOR SPECIFIC CLASSES

Miscellaneous Amendments

The regulations of the Post Office Department are amended as follows:

I. In § 61.1 paragraph (c) is amended to include procedures for the issuing of

money orders by print-punch machine and to revise the illustrations therein. As so amended, paragraph (c) reads as follows:

§ 61.1 Money orders.

(c) *Putting amount, dating stamp, and initials on money orders*—(1) *Amount.* The employee who issues the money order shall enter the amount, as follows:

(i) *Machine issuance.* (a) Print-punch the amount requested by the purchaser in the order and both stubs in the manner described in the Operators Manual, copy of which was packed with each machine.

(b) Enter control stamp for the same or next higher amount after the words "Note Valid For More Than".

(c) The illustration also shows the proper manner of issuing order for payment in Canada. (The rate of exchange use in the illustration is hypothetical.

The illustration shows a U.S. Postal Money Order for \$20.00. The front of the order has a stamp for "2000" (representing 20 dollars) and "00" (representing 00 cents). It includes a "WARNING" section with instructions: "DO NOT CASH IF ALTERED". The back of the order has a "PURCHASER'S RECEIPT" section and a "POST OFFICE RECORD" section. The order is labeled "U.S. Postal Money Order" and "MAXIMUM VALUE ONE HUNDRED DOLLARS".

(ii) *Manual issuance.* (a) If the print-punch machine is inoperable, a money order should be issued in the manner illustrated below.

The illustration shows a U.S. Postal Money Order for \$40.00. The front of the order has a stamp for "35" (representing 35 dollars) and "47" (representing 47 cents). It includes a "WARNING" section with instructions: "DO NOT CASH IF ALTERED". The back of the order has a "PURCHASER'S RECEIPT" section and a "POST OFFICE RECORD" section. The order is labeled "U.S. Postal Money Order" and "MAXIMUM VALUE ONE HUNDRED DOLLARS".

(b) If a money order is hand issued for less than \$1, for example 52 cents, write = in the dollars block and 52 in the cents blocks and then stamp with the lowest dollar control stamp.

(c) Manual issuance of money orders must be kept to the minimum. Inoperable machines must be replaced as quickly as possible as provided in the Operators Manual.

(2) *Dating stamp and initials.* The employee who issues the money order shall put the all-purpose dating stamp (item 570) and his initials, in ink, in the spaces provided on form.

II. In § 112.4 subparagraph (3) of paragraph (b), as amended by 28 F.R. 5423, is amended for the purpose of clarification to read as follows:

§ 112.4 Printed matter.

(b) *Weight limits.* * * *

(3) Packages or bundles of second-class and controlled circulation publications mailed to Canada by publishers or registered news agents may weigh up to 30 pounds. When mailed by other than publishers or news agents, the weight limit is 6 pounds 9 ounces.

NOTE: The corresponding Postal Manual Section is 222.423.

(R.S. 161, as amended; 5 U.S.C. 22, 39 U.S.C. 501, 505)

LOUIS J. DOYLE,
General Counsel.

[F.R. Doc. 63-6722; Filed, June 26, 1963;
8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 990]

[Docket No. AO 332-A 1]

CENTRAL CALIFORNIA GRAPES FOR CRUSHING

Notice of Recommended Decision and Opportunity To File Written Exceptions With Respect to Proposed Amendment of Marketing Agreement and Order

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 990; 28 F.R. 579), notice is hereby given of the filing with the Hearing Clerk, United States Department of Agriculture, of this recommended decision with respect to the proposed amendment of the marketing agreement and Order No. 990 (7 CFR Part 990), regulating the handling of Central California grapes for crushing (hereinafter collectively referred to as the "order"). The order is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), hereinafter referred to as the "act", and any amendment which may result from this proceeding also will be effective pursuant to the act.

Interested persons may file written exceptions to this recommended decision with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington 25, D.C., not later than the close of business on the day after publication of this recommended decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. A public hearing on the record of which the proposed amendment of the order is formulated was held in Fresno, California, on April 4 and 5, 1963. Notice of the hearing was published in the FEDERAL REGISTER on March 21, 1963 (28 F.R. 2802) and included proposals submitted by the Grape Crush Administrative Committee (hereinafter referred to as the "committee"), the administrative agency established pursuant to the order. The notice of hearing also included a proposal submitted by the Grape Department, Fresno County Farm Bureau, and a proposal by the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture.

Material issues. The material issues presented on the record of the hearing involve amendatory action relating to:

(1) The authority and method for permitting handlers to receive and use certain raisins as grapes for crushing;

(2) The time for committee recommendation of volume regulation;

(3) The authority for use of a formula by which volume percentages may be computed;

(4) The requirement for setting aside products produced from grapes for crushing;

(5) The maximum alcohol content of dessert wine eligible for setaside;

(6) The authority and limits for handler substitution of free inventory and setaside products from the crush of the same or different crop year(s);

(7) The compensation to handlers for storage of setaside after the second crop year, the payment by handlers of unearned setaside charges to the committee, and the payment for removal and subsequent storage of setaside when such removal is requested by handlers;

(8) The authority and method for permitting certain handlers to set aside and hold table wine, and the permissive establishment of table wine as an eligible setaside item for all handlers;

(9) The authority and methods for optional diversion of grapes for crushing by producers;

(10) The authority and methods for mandatory diversion of grapes for crushing by handlers;

(11) The authority and methods for the committee to exchange setaside items for free inventory products, and to replace from setaside handlers' deliveries of free inventory products into non-normal outlets;

(12) The authority for crediting disposition of the setaside of any crop year, for the purpose of distributing proceeds, to the earliest unliquidated setaside;

(13) The application of order provisions to handlers; and

(14) The making of such changes in the order as are necessary to bring the entire order, as proposed to be amended, into conformity with the amendatory action resulting from the hearing.

Findings and conclusions. The findings and conclusions on the aforementioned material issues, all of which are based on the evidence adduced at the hearing and the record thereof, are as follows:

(1) Section 990.50 should be amended to authorize the committee to permit handlers to receive and use as grapes for crushing some or all of the raisins that fail to meet the minimum grade and condition standards of the raisin marketing order program (7 CFR Part 989) for reasons that exclude such raisins from coverage under crop insurance then provided by the Federal Crop Insurance Corporation.

Section 990.50 now prohibits handlers from receiving and using as grapes for crushing any grapes from which a portion of the moisture has been removed by drying but permits handlers to receive and use, within limits, residual material from raisin processing. The joint result of § 990.50 and the raisin marketing order program is that raisin producers can dispose of raisins, which fail

to meet the prescribed minimum standards and are not reconditioned to standard quality, only within the State of California and in low-return outlets such as the animal feed outlet. Crop insurance presently available to producers insures against loss to producers only on raisins which fail to meet the minimum standards due to damage by rain.

In view of these circumstances, raisin producers, in determining whether to make raisins or market their grapes in the crush outlet, sometimes face the possibility that their raisins, due to uninsurable defects, may in some part have to be disposed of in the low-return animal feed outlet. Normally, the industry total of such raisins is small, being less than one percent of the total raisin production in the 1961 and 1962 seasons. However, in any season a significant portion of the raisins of an individual producer may fall into this category.

Use of the proposed authorization should be permitted in any crop year only if the committee determines no later than September 20, when percentages are recommended, and the Secretary concurs, that the objectives of the grape crush order program will not be affected adversely. In line with the primary purpose of § 990.50, this requirement would safeguard against the possibility of unforeseen quantities of raisins suddenly entering the distillation outlet and jeopardizing the price enhancing objectives of the grape crush program. The requirement would afford such protection by causing the committee and the Secretary to consider, at the time volume control percentages are recommended, whether the authorization should be used for a particular crop year. Bearing on this decision would be such matters as the raisin prices obtainable from the livestock feed outlet as compared with those from the distillation outlet, charges for reconditioning off-grade raisins, then existing Federal crop insurance coverage for raisins, the likely volume of raisins that would enter the distillation outlet, and the probable net effect on the volume of grape crush surplus.

The insurance provided by the Federal Crop Insurance Corporation should be specified as the standard of insurance coverage. Confusion would result if more than one standard were used for this purpose at the same time. This insurance (7 CFR Part 402) presently covers only damage caused by rain during the drying period but the recommended amendment should recognize that such standard would be changed automatically and correspondingly if the insurance coverage as to defects or causes of damage of raisins were altered at some future time. The standard would be used in determining the eligibility of all raisins for distillation, irrespective of whether the producer has

crop insurance coverage on any of his raisins.

The second sentence of § 990.50 should be revised to make it clear that the receipt and such use of raisins by handlers must be according to rules and regulations established by the committee with the approval of the Secretary. This is desirable so that appropriate limitations, and administrable and enforceable procedures, would be established. Such procedures could include, among others, provisions to the effect that any producer whose raisins fail to meet the minimum grade and condition standards due to non-insurable cause could apply to the committee for permission for such failing raisins to be received and used by a handler for distillation; that such application must be accompanied by a certificate of the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, setting forth the specific grade defect or defects causing the rejection; and that the committee would approve or disapprove the application depending on whether specified criteria are met. Such control by the committee would be necessary to assure that only eligible raisins are received and used by handlers for distillation.

(2) The present provisions of § 990.53 *Percentages* should be redesignated as paragraph (a) *Establishment* due to the proposed addition of a new paragraph (b) *Formula*, as discussed herein under material issue (3).

The first sentence of § 990.53 should be changed to require the committee to arrive at its conclusion on the likely volume to be crushed in relation to the desirable free tonnage and its recommendation to the Secretary on initial volume percentages for any crop year not later than September 20 of the crop year, rather than during the period September 15 to 18, inclusive. A major item needed by the committee for these purposes is a current estimate of the total quantity of grapes harvested for raisins. Under the present requirement it could happen in some future year, when the raisin production is late or when weather conditions delay the obtaining of up-to-date aerial information on the raisin lay, that the committee would be required to meet for the purposes stated without having such a current estimate. Changing the final, permissible date from September 18 to September 20 would make it more certain that the committee would have current raisin production data when it met.

On the other hand, the September 15 limitation should be removed because it is possible in some future year that the raisin lay would be substantially completed earlier than usual so that an estimate of the raisin production would be available before September 15. Under these circumstances and to permit the early establishment of volume percentages, it would be desirable for the committee to meet prior to that date and reach and submit its conclusions and recommendation on volume regulation to the Secretary.

(3) A new paragraph (b) *Formula* should be added to § 990.53 to provide

specific authorization in the order for the committee to establish, with the approval of the Secretary, a formula for computing the free and surplus percentages it shall recommend to the Secretary. The formula should set forth, at least, the factors and the method of computation to be used in determining the initial volume percentages of a crop year. It would be established through rule making procedures.

A formula for computing the initial volume percentages could now be established through rule making under the order's provisions including the general authority of § 990.35(k). However, express authorization for this action should be set forth in the order, consistent with the need for the order to state, insofar as practicable, the various actions it authorizes.

The exercise of the authority to establish such a formula should be permissive and not mandatory. Even though good reasons support the formula approach, some unanticipated, overriding consideration might preclude use of this approach for a particular crop year.

The establishment in advance and use of a formula to develop the committee's percentage determinations in September would give producers and handlers advance notice of the precise method by which the committee would arrive at its recommendation. This would eliminate confusion at the September meeting and, prior thereto, would permit producers and handlers to proceed with confidence in individual production, marketing, and price decision-making because they would know that the desirable free tonnage previously established would be fully implemented and protected by the percentages. Moreover, by knowing that the committee would use a particular formula in developing its percentage determinations, there would be enhancement of the ability of producers and handlers to make their own estimates of the probable free and surplus percentages for the crop year and to determine whether grapes should be harvested for raisins or for the crush outlet. In this way the certainty created by an established formula could affect the utilization of the grape crop in a manner beneficial to the industry.

It was proposed that: (1) The formula to be used for computing the recommended percentages for a crop year shall be submitted to the Secretary by about June 15 of the preceding crop year; and (2) for any modification or termination of an established formula to be effective for a crop year, it shall have been submitted to the Secretary for approval by about June 15 of the preceding crop year. These proposals would not permit any deviation from the formula or from the modification or termination initially recommended by the committee for a crop year. At the same time, however, the hearing testimony recognized that any formula would be established through normal rule making procedures. Such procedures involve the possibility of changing the original proposal recommended by the committee. The testimony also recognized that the formula initially proposed by the committee for a crop year might need to be reconsidered

by the committee to permit the establishment of an acceptable formula. The same possibilities would be involved in any committee proposal to modify or terminate a formula. In these situations the final formula action taken would vary from the action recommended by the committee in June. Therefore, the proposed time limitations are not included as a part of the proposed amendatory action. However, the committee would not be precluded from submitting its formula recommendations in a timely fashion well in advance of the applicable crop year and should do so.

It should be provided that an established formula shall apply until modified or terminated. The committee should not be required to act annually to continue an established formula if it proves satisfactory. On the other hand, if modification or termination of a formula should be necessary or desirable, such action could be taken in a manner similar to that used in establishing the formula.

(4) The first sentence of § 990.54 should be amended by inserting the phrase "of grapes for crushing" immediately after "of the current year's crush". The insertion of this phrase would make it clear that products which handlers may set aside in satisfaction of setaside obligation must not have been produced from grapes grown outside the nine-county area covered by the order but must have been produced from "grapes for crushing" as such are defined in § 990.5. As there defined "grapes for crushing" are produced only within such nine-county area.

If handlers could satisfy setaside obligation with products produced from other than nine-county area grown grapes, then handlers' total requirements for area grapes would be reduced correspondingly to the detriment of producers in the area.

The order has already been interpreted as requiring eligible setaside products to be produced from grapes, whether fresh or dried, produced within the nine-county area. The recommended amendment would affirm this interpretation and be consistent with the fact that the order regulates the handling of only Central California grapes for crushing.

(5) The present second sentence of § 990.54 should be amended to change, from 21 percent to 23.9 percent alcohol by volume, the maximum alcohol content of dessert wine eligible to be set aside and held by handlers in satisfaction of setaside obligation on and after January 31 of any crop year. The sentence presently designates dessert wine of not less than 19.5 percent nor more than 21 percent alcohol by volume as eligible for setaside. The minimum level of 19.5 percent alcohol by volume would not be altered.

The proposed change would permit more efficient and economical use of handler storage space. In this regard, a given storage tank will hold more proof gallons of dessert wine at 23.9 percent alcohol by volume than at 21 percent.

The range of 19.5 to 21 percent alcohol for setaside dessert wine was initially prescribed in the order because it is the range for this product customarily mar-

keted for beverage purposes and hence, it was concluded, would facilitate disposition of such wine by the committee.

However, permitting dessert wine of higher alcohol content up to and including 23.9 percent alcohol by volume in setaside may not impede committee disposition of setaside in terms of experience to date and may give the committee more flexibility in this respect. This is because the higher the alcohol content of the wine, the less is the cost of converting it by distillation to high proof, the principal outlet to date for surplus.

The maximum permissible alcohol content of dessert wine, as specified in § 990.9, is 24 percent by volume. A product containing more than this percent of alcohol would be classified as distilled spirits and taxed at a much higher rate. For the purpose of setaside dessert wine the alcohol limit should be established at 23.9 rather than 24 percent to provide a safety margin against inadvertent production and setting aside an ineligible product subject to the higher tax.

(6) The following sentence should be inserted immediately after the present sixth sentence of § 990.54: "Any substituted product shall be of the same crop year's crush as the replaced item unless the committee, with the approval of the Secretary, has established rules and regulations permitting substituted products to be of the crush of other crop year(s)." The aforesaid sixth sentence provides that, upon establishing the January 31 setaside, a handler may substitute any item held for the account of the committee upon prior notice to the committee of intent to withdraw, to substitute, and to withhold the equivalent in another category of eligible setaside, but that the right to substitute may be suspended by the committee to facilitate disposition of setaside.

The first portion of the proposed sentence, that any substituted product shall be of the same crop year's crush as the replaced item, would specifically set forth, make clear, and affirm an order requirement which has been effective since promulgation of the program and has the effect of prohibiting handlers from substituting for the setaside products of a given crop year, products of the crush of other crop year(s).

The remaining portion of the proposed sentence, however, would enable departure from the foregoing requirement if the committee, with the approval of the Secretary, establishes rules and regulations permitting handlers to replace products they withdraw from setaside with products of the crush of different crop year(s).

This proposed additional authorization, when used under appropriate rules and regulations, would better enable handlers to meet market requirements by giving them additional flexibility and means for keeping their free inventories balanced in relation to market demand. The additional latitude for substitution would tend to increase handlers' sales of products in free tonnage outlets, result in lower year-end inventories, and create the consequent need for a larger free tonnage in the following year to the benefit of producers.

The prescribing of rules and regulations to govern the indicated substitutions would be necessary, among other things, to protect producers' equities in the setaside, assure that price depressing supplies of any particular setaside product would not be released into free tonnage outlets, and prevent weakening of handler demand for producer's grapes during the fall buying season. So that handlers' total requirements for grapes for crushing would not be reduced by the recommended amendatory action, there should be no change in the requirement in § 990.54 that a handler's setaside obligation of a crop year up to and including January 31 must be fulfilled with products from that year's crush.

(7) The first sentence of § 990.57 should be revised so as to permit charges for which handlers are paid for receiving, processing, and storing setaside to be established by the committee with the approval of the Secretary as soon as practicable after the beginning of the crop year, rather than at the beginning of the crop year. This change would give the committee slightly more time in which to submit its recommendation on charges to the Secretary and still permit the charges to be established and made known to handlers before they purchase grapes for crushing in significant volume in a crop year. Experience under the order to date has demonstrated that the committee needs such additional time.

There should be added to § 990.57 a clarification that costs of storing any setaside held by a handler after the second crop year of setaside shall be paid by the committee from setaside proceeds. Handlers' costs relating to setaside for the first two crop years of setaside, including storage costs, have been and should continue to be, pursuant to § 990.57, borne by producers, or their successors in interest, through handlers deducting such costs from any moneys owed by handlers to such persons including that for free tonnage. This is because the committee may not have appropriate funds with which to pay such costs. However, the committee has shown that it can sell setaside in non-normal outlets and obtain sufficient proceeds therefrom to pay at least any third or later year storage charges. The clarification would relieve handler uncertainty as to the source of funds for any third or later year storage costs.

There should be included in § 990.57 express authority to require handlers to pay to the committee any unearned charges on setaside which the committee removes from handlers, prior to the expiration of prepaid storage, due to committee disposition of setaside or other reason for removal. This is consistent with the need for the order to express, to the extent practicable, the actions it authorizes.

Section 990.57 now provides that a handler may request the committee to remove setaside from his premises upon expiration of prepaid storage charges or the refund of unearned charges, and that the committee shall comply within a reasonable time consistent with the availability of suitable storage. These provisions should be revised to require the

committee to comply with such a request within a reasonable time consistent with the availability of suitable storage and upon the handler agreeing to pay to the committee the difference between (1) the costs to the committee of removal plus any costs of storage subsequent to removal to the end of the second year of setaside, and (2) any unearned charges paid by the handler to the committee at the time of removal.

The proposed revision recognizes that removal of setaside due to a handler request is for his benefit and causes expense to the committee which it would not otherwise incur. Therefore, the handler should pay the costs of removal of the setaside from his place of storage to place of subsequent storage, whether the removal occurs before or after the second year of storage. Since the removal would be at the handler's request, he should also pay any costs of storage subsequent to removal to the end of the second crop year of setaside. However, the amount of the foregoing payments should be offset to the extent of any unearned charges paid by the handler to the committee so that he would not pay for storing the same setaside twice. Since the committee would pay for storage beyond the second year of setaside, the handler would not need to pay for such storage nor would there be unearned storage charges if removal occurred after the second year of storage. Hence, in this case, the handler should be required to pay only the costs of removal.

(8) A relatively small number of handlers who individually handle small tonnages of grapes for crushing, generally not over 500 tons, normally produce only table wine from such grapes and do not have facilities for producing high proof and concentrate which are eligible items for setaside. To produce dessert wine, the other item presently eligible for setaside, they must acquire from others high proof to fortify, and may acquire concentrate to add to, the wine they produce. If handlers in these circumstances were permitted to set aside table wine, it would not constitute a large quantity of setaside. Table wine has not been, pursuant to § 990.54, established by the committee, with the approval of the Secretary, as an approved item for setaside on an unlimited basis for all handlers. Under these circumstances, the table wine handlers described are currently able to meet their setaside obligations only by acquiring eligible products from other handlers or by producing dessert wine after acquiring high proof needed for this purpose from other handlers.

Other handlers are able to set aside products they produce. On the basis of the promulgation record in 1961, table wine was not specifically named in the order as an eligible item for setaside. On the basis of such record, an indication was stated in the recommended decision (26 F.R. 6085) which was adopted as the final decision (26 F.R. 6984) in that proceeding, that all handlers who would be subject to this program would have one or the other of these items (concentrate, dessert wine, or high proof) for setaside. However, during subsequent operation of the program, a few handlers

requested permission to set aside table wine as this was all they produced.

As an accommodation to the handlers in the described situation, a new paragraph (c) should be added to § 990.58 to authorize the committee to permit any handler who meets and continues to meet certain prescribed conditions to set aside and hold table wine for the account of the committee in satisfaction of his setaside obligation. To qualify for this privilege, the handler should obtain committee approval of his application to set aside table wine, currently be neither an operator of a distilled spirits plant nor of a concentrating facility, and meet such other condition(s) as may be prescribed by the committee with the approval of the Secretary.

It was proposed in the notice of hearing that § 990.54 should be amended so that "handlers who are neither operators of a distilled spirits plant or a concentrating facility" would be enabled automatically, upon the proposal becoming effective, to hold setaside in the form of table wine. However, committee approval of a handler's application should be prerequisite to granting the privilege to him so that, in accordance with sound administrative procedure, prior determination of handler eligibility would be by the committee and not by the handler. Also, as the committee gains experience with administering this privilege and to prevent possible abuse, it may find that conditions of eligibility, in addition to that of lack of facilities, should be established. The proposal involves the concept of exemption and hence it would be more appropriate for its provisions to be included in a new paragraph (c) under § 990.58 *Exemption*.

Any table wine which would be set aside pursuant to committee approval of a handler's application should be subject to the same program provisions as are applicable to all setaside items so that the table wine set aside would be of marketable quality, properly stored, maintained, controlled, disposed of, and accounted for to equity holders. For example, under the marketable quality provisions of § 990.54 which apply to all items set aside, it may be necessary or desirable to prescribe through rule making, among other things, a minimum permissible percentage of alcohol by volume for table wine.

If, pursuant to § 990.54, table wine is established at some future time by the committee, with the approval of the Secretary, as an item eligible for setaside on an unlimited basis for all handlers, the granting of the privilege to any handler to set aside and hold table wine under proposed § 990.58(c) would be unnecessary. The provisions of the new paragraph (c) should recognize this eventuality.

As a conforming change, there should be inserted in the second sentence of § 990.54 immediately after "Brix," the clause "table wine as may be permitted pursuant to § 990.58(c)". The insertion would remove any conflict between § 990.54 and proposed § 990.58(c) by recognizing in § 990.54 that table wine could be set aside in special circumstances pursuant to § 990.58(c).

Section 990.54 presently authorizes the establishment of table wine as an eligible setaside item for all handlers. While table wine has not been made so eligible, the committee may wish to make it so in the future due to favorable disposition potential for table wine, and industry technology enabling less variation in the quality of table wine and better control of storage conditions to prevent its deterioration. So as to remove any doubt that table wine could be established under the order as an eligible setaside item for all handlers, there should be inserted "(including table wine for all handlers)" in the last clause of the second sentence of § 990.54 immediately after "or such other items".

(9) A new section, § 990.59 *Optional producer diversion*, should be added to the order to authorize the committee, upon recommendation by it and approval by the Secretary, to issue diversion certificates, for use in satisfying setaside obligation, to producers who voluntarily divert grapes for crushing from the crush outlet by green dropping or other approved methods.

Producers compensate handlers for receiving, processing, and storing and certain other costs relating to setaside. Presently, the rate of compensation for such costs of setaside, including second year storage, is established pursuant to the order at \$12 a ton of grapes. Under the proposed diversion authorization, a producer, by diverting grapes instead of delivering them for setaside, could save this cost plus about \$10 a ton estimated at the hearing as the cost of harvesting and delivering grapes to the crush outlet, or an estimated total gross saving of about \$22 a ton. This saving would be reduced by the physical and administrative cost of diversion, estimated at the hearing to approximate \$5 a ton. It would also be offset to the extent of the net return which the producer would have received from the disposition of his grapes in the form of setaside had he delivered his grapes for setaside rather than diverting them. Sales of setaside made under the order to date are expected to net producers about \$2 a ton of grapes used to make the products sold. Thus, on the basis of circumstances which have prevailed to date under the order, a producer could have effected an estimated net saving of about \$15 a ton (\$22 less \$5 less \$2 equals \$15) if he had green dropped grapes instead of delivering them for setaside. While the net return to producers from disposition of setaside may increase from the past level as the industry progresses in the development of non-normal outlets, or when setaside is needed to augment free tonnage in the event of a small crush, such net return would have to increase by about \$15 a ton of grapes so as to cancel the net saving which a producer would make by green dropping rather than delivering grapes for setaside.

The proposed authorization would provide an alternative to the presently authorized method of diverting surplus grapes for crushing to non-normal outlets in the form of setaside products. Use of such authorization, under a condition of low net returns to producers

from setaside disposition, would effect a net saving to the participating producers, thereby increasing their net returns on their total productions of grapes for crushing. Its use would also reduce the amount of storage facilities needed by handlers for holding setaside.

The new section should provide that no producer shall be required to divert from sale or delivery to handlers all or any portion of the grapes for crushing produced by him. This would be consistent with the act which prohibits regulation of any producer in his capacity as a producer, and would make it clear that he has complete freedom of choice as to whether or not he uses the privilege of diverting if diversion operations are authorized.

Authority for the committee and the Secretary to make the diversion privilege available to producers as to grapes for crushing from the grape crop of any year should be permissive because such diversion may not be needed in some seasons. For example, a setaside percentage may not be established for a particular crop year due to a small grape crop; or all surplus grapes for crushing may be needed in setaside for stabilization purposes; or the level of net returns from setaside disposition may exceed the financial advantage to producers from diverting.

So that diversion would be used only when needed and be conducted properly, the new section should require certain conditions to be met before the Secretary could authorize the use of such operations. It should require the committee to adopt an operations plan which would tend to effectuate the declared policy of the act and would provide adequate setaside for stabilization reserve purposes. No useful purpose would be served if the operations were not designed to improve producer returns. Also, the setaside of grape products acts as a reserve to augment the free supply of grape products in any season with a total crush less than that necessary to fulfill commercial market requirements and result in an adequate free inventory at the end of the crop year. The existence of this reserve is necessary to permit accomplishment of the stabilization objective of the order.

Another condition should be that appropriate implementing rules and regulations for conducting diversion operations be available before the Secretary authorizes such operations. Conformance with this condition would be essential so that producers and handlers would know the "rules of the game" in advance and could make their plans and conduct their operations accordingly. It is not possible to foretell at this time all of the requirements and procedures that should be specified because they would depend on such things as the types of diversion authorized for a particular crop, and the views of the committee and the Secretary as to the safeguards needed to prevent abuse of the privilege. Wide latitude in establishing appropriate rules and regulations would be essential to the development of a workable, administrable, and enforceable, diversion plan, and to permit

changes therein as indicated by experience gained in operation.

So that the objectives of optional producer diversion may be achieved without interfering with attainment of order objectives, eligible diversions should be confined to those which would not interfere or be competitive with the normal marketing of grapes for crushing or the products thereof.

One such method of eligible diversion should be green dropping, the removal of grapes from the vines when the grapes are so immature as to be unfit for use or sale for any normal purpose.

Another such method should be the delivery of grapes to a diversion location approved or established by the committee. In this way, the grapes could be destroyed under the committee's surveillance or accumulated and disposed of by the committee in such outlets as the livestock feed or fertilizer outlets. This method would be desirable because it would permit the delivery to such locations of ripened grapes from vineyards or culls from fresh grape shipping operations.

It is possible that other desirable methods of diversion would be developed which should entitle producers to receive diversion certificates. Therefore, provision should be made for the committee to authorize any such method with the approval of the Secretary.

The new section should further provide that, after diversion operations are authorized with respect to a grape crop, any producer may, upon receiving committee approval of his application, divert grapes for crushing within prescribed limits and receive therefor diversion certificates which may be submitted in lieu of setaside. This application and approval procedure would establish committee control of diversions and protect against the possibility of producers making ineligible diversions for which they could not receive credit.

The committee, being satisfied that proper diversion actually occurred, should issue to the producer applicant and made out in his name diversion certificates indicative of the sugar weight diverted. So as to prevent abuse, it would be essential for the committee to verify, or to receive satisfactory proof of, diversion before issuing the certificate. The certificate should be made out in the applicant's name so that the producer actually diverting the grapes would receive appropriate credit and proper record control could be maintained. Credit given for grapes for crushing diverted should be in terms of sugar weight because it is the same basis used for equity holders in setaside, allows for the different sugar contents of grapes, and is a common denominator easily converted to proof gallon equivalents of grape crush products.

Alternative ways were indicated at the hearing for computing the sugar weight for inclusion in the certificate and how this weight value should be applied in freeing a producer's deliveries from setaside obligation and in permitting a handler to satisfy his setaside obligation. One method would involve making the diversion certificate for a sugar weight

equal to the result of applying the free percentage to the sugar weight of the grapes diverted. Another method would involve making the diversion certificate worth the total sugar weight of the grapes diverted. The latter method probably would be easier for producers to understand and could be applied directly by handlers to their setaside obligations. However, to allow flexibility in operation, the recommended amendment should not bind the committee to the use of a specific method.

The new section should further provide that in establishing the January 31 setaside, each handler should deduct from his total setaside obligation all credits he then holds in the form of diversion certificates and should physically set aside the balance of the obligation. At the same time the certificates should be presented to the committee so that compliance activity on handler premises would be directed only at the balance of the obligation. In computing the total setaside obligation, the sugar weight of the diversion certificates should be included in total receipts of grapes for crushing so that there would occur a correct computation of the obligation and of satisfaction by use of certificates. Should any unused diversion credits be acquired by handlers subsequent to January 31, setaside should be released to permit the bringing of the actual free tonnage up to the desirable free tonnage. The release of setaside to the handler would be in processed form. If the grapes used to produce the products released had not been diverted but had been received by the handler as free tonnage, he would have had to bear the expense of receiving, processing, and storing. Therefore, it is only fair that the handler pay to the committee the applicable charge, specified pursuant to § 990.57, for receiving, processing, and storing that setaside released to him. The committee should be required to establish rules and regulations covering the issuance, transfer, and use of diversion certificates so that the administrative techniques would be developed prior to operation.

It was proposed that any diversion certificate not used in a crop year could be returned to the committee for reissuance and use in the succeeding crop year. If this proposal were adopted, it would introduce unnecessary complexity into the establishment of the volume percentages. This would, as compared with a situation whereby the certificates could be used only in the crop year issued, introduce a speculative and uncertain element into volume regulation. If the certificates could be used only in the crop year of their issuance, the desirable free tonnage objective of that year would likely be fulfilled. By providing for persons to obtain unused certificates from their holders, and for handlers to obtain setaside in exchange for any such certificates acquired, there would be no need for certificates to be carried into the subsequent year. Moreover, any carried over certificates would need to be added to the supply of the subsequent season so that the certificates could be honored in the surplus percentage. In view of these

reasons, the proposal is not recommended for adoption.

Prior to the delivery by the committee of a diversion certificate to a producer, he should pay to the committee, according to a schedule of charges, the expenses determined by the committee to be necessary to cover its costs. Inasmuch as a diversion would be at the producer's election and for his benefit, he should bear the costs connected with it. So as to maintain equity with respect to the costs charged, the committee should be permitted to make separate charges for different methods of diversion and not be required to maintain charges for one particular method on a uniform basis per unit diverted.

If any revenue is obtained by the committee from diversion of grapes for crushing, the committee should disburse the net proceeds to producers delivering such grapes for crushing. The proceeds from, and the costs of, each method of diversion should be kept separate to make the foregoing possible. Disbursement should be on the basis of sugar weight delivered by each producer to maintain equity of producer participation. The foregoing would cause a producer to receive any revenue due him from the particular method of diversion chosen and would cause him to bear his own costs and not some other producer's costs of diversion.

Whenever proceeds from the setaside of any crop year exceed the total producer deduct pursuant to § 990.57 and producer delivery costs of grapes in setaside, the committee should be permitted with the approval of the Secretary, to provide for the sharing in such excess by all participants in the diversion or the setaside of the crop year. Use of the foregoing authority should be permissive rather than mandatory. This is for the reason that the exercise of it may be possible only when returns from setaside are relatively large due to sales of setaside made to handlers pursuant to § 990.62(b) for use in free tonnage outlets, or in the event returns from setaside in non-normal outlets increase to a much higher level than the present level. Under such conditions, the prior claim to setaside proceeds by the producer contributors thereto for their costs associated with delivery to handlers for setaside, should be recognized. Exercise of the authority would permit producers who diverted to share in the benefits of the stabilization program along with their fellow producers choosing to deliver to the setaside.

To recognize that producer diverters may share in the net proceeds from disposition of setaside, paragraph (d) of § 990.62 (recommended herein to be redesignated as paragraph (e) of such section) should be amended by adding "Except as may be provided pursuant to § 990.59(f)," before the beginning of the first sentence.

(10) Another new section, § 990.60 *Mandatory handler diversion*, should be added to the order to provide authority for requiring handlers to divert to diversion locations or into approved outlets, a percentage of their crop year receipts of grapes for crushing which

otherwise would end up in setaside. Operations under this section in a crop year could be conducted in consideration of any under recommended new § 990.59 *Optional producer diversion*.

The proposed authorization would permit supplementing the optional producer diversion or using the handler diversion separately. Under a condition of low net returns to producers from setaside disposition, a net saving could accrue to producers by tonnage being diverted rather than being processed and stored, thereby reducing the cost and causing increased net returns on their total productions.

These benefits would be less than those which would result under optional producer diversion from green dropping because producers, under mandatory handler diversion, would not save the cost of harvesting and delivering grapes to handlers. If the handler charge for setaside were \$12 a ton of grapes, the cost of harvesting and delivering grapes to handlers \$10 a ton, the physical and administrative cost of mandatory diversion \$5 a ton, and the net return from setaside \$2 a ton, a net saving of \$5 a ton would accrue to producers on tonnage which handlers divert in lieu of converting to setaside products. This may be compared with an estimated net saving of about \$15 a ton that would accrue to producers by diverting by green dropping instead of delivering for setaside. While the net saving to producers may be less under mandatory handler diversion, its use should be authorized so as to permit the diversion of surplus grapes for crushing in a crop year when conditions indicate a burdensome total setaside and a possibility of improving producer returns.

The new section should provide whenever the committee concludes that, despite any producer diversion of grapes for crushing, the delivery of such grapes will cause a burdensome total setaside from all crop years and that the diversion of a portion of handler receipts to non-normal disposition would tend to effectuate the declared policy of the act, it may recommend such to the Secretary. For the same reasons set forth herein under material issue (9) in connection with permissive authorization for optional producer diversion, the authorization for the committee and the Secretary to invoke mandatory handler diversion should be permissive. An additional reason is that diversion by handlers would not be necessary in a crop year when sufficient producer diversion of tonnage occurred.

The committee should make its recommendations at the time it recommends the initial free and surplus percentages for the crop year to permit the diversion percentage to be co-ordinated with the free and surplus percentages and, at the same time, permit establishment of the diversion percentage as early as practicable so that handlers would have as much time as possible to meet their diversion obligations.

The committee's recommendation should include the basis for the recommendation and the percentage of each handler's total receipts of either fresh

or all grapes for crushing for a portion or all of the crop year, other than those exempted from volume regulation pursuant to § 990.58, which each handler should be required to divert. Since the basic objective would be to cause diversion of fresh grapes and such are received mostly during a few months of the crop year, the committee should not be required to maintain diversion facilities for unnecessary periods. It is conceivable, however, that in some seasons, it would be desirable to cause the diversion of all types of grapes for crushing and this could be necessary for the entire crop year. The diversion percentage should not apply to grapes for crushing exempted from volume regulation because they would not be considered as comprising any of the surplus of the commodity. If, on the basis of the committee's recommendation and other information, the Secretary concurs in the need to divert a portion of handler receipts, he should establish the appropriate diversion percentage as soon as practicable in order to allow handlers as much time as possible to meet their diversion obligations.

Whenever a diversion percentage has been established in a crop year, each handler should divert a quantity of grapes for crushing of a sugar content equal to that obtained by multiplying the total sugar tons of such grapes for crushing received by him in that crop year, other than those exempted from volume regulation pursuant to § 990.58, by the diversion percentage. The diversion percentage should be applicable to the sugar weight because that information would be determined at the time grapes for crushing are received by handlers and is used in determining setaside obligations. Moreover, if the diversion obligation were to be satisfied with fruit weight, receivers of dried grapes for crushing, in particular, could satisfy without diverting the desired proportion of sugar.

The surplus percentage would be applied to diverted tonnage as well as to that crushed. To recognize for the purposes of § 990.53 that the total crush would include diversions by producers and handler receipts diverted by handlers but exclude exempt tonnage, a conforming change should be made in the first sentence of § 990.53 by adding after "such total crush" a comma and the phrase "including any tonnage diverted pursuant to §§ 990.59 or 990.60 but excluding that exempted pursuant to § 990.58."

In the interest of minimizing hauling, it could happen that grapes for crushing would be received at a diversion location or in an approved diversion outlet directly from a vineyard rather than being received for such diversion from a handler's premises. Any such direct receipts from a vineyard of grapes for crushing eligible for diversion and under a handler's control should be included in determining a handler's total net weight receipts of grapes for crushing so that the handler would receive proper credit for such diversion.

It was proposed that the committee be permitted to credit against any handler's diversion obligation, grapes for crushing diverted by him prior to establish-

ment of the diversion percentage for a crop year. Since this would be a reduction of supplies of the crop year, it is appropriate that the committee recognize such diversions and credit them against the handler's diversion and setaside obligations. However, these should be credited only if performed within the committee procedures applicable to any other diversions.

Since handlers would be diverting surplus grapes for crushing from normal outlets, they should receive credit against both their diversion and setaside obligations for reducing the surplus. Therefore, whenever a diversion percentage has been established for a crop year, each handler's obligations for that crop year should be satisfied in an amount equal to the sugar weight or proof gallon equivalent of the grapes for crushing diverted by him. For purposes of computing the handler's total setaside obligation, grapes diverted by him, whether or not received at his premises, should be included in determining his total receipts of grapes for crushing. This is because the diversion and surplus percentages should be applied to the total net weight of grapes for crushing received by each handler, the result of which, when adjusted for sugar content, would be the basis for determining his obligations. The phrase "whether or not received at his premises" would recognize that a handler would divert grapes for crushing from his premises or directly from a producer's vineyard. So that credit for diversion would be given on a uniform basis to handlers and in a manner comparable with that of determining their setaside obligations, conversion factors established by the committee pursuant to § 990.54 should be used in determining the proof gallon equivalent of grapes for crushing diverted by a handler.

Certain diversion procedures should be set forth in the new section to permit accomplishment of diversion and so that handlers would know how to meet their diversion obligations. Whenever a diversion percentage has been established for a crop year, the committee should designate diversion locations at points reasonably accessible to handlers or approve outlets to which handlers may deliver grapes for crushing for crediting against their diversion obligations. The diversion locations should be so situated in order to minimize hauling costs. The committee should control such diversion locations because it would be responsible for facilitating diversion and exercising appropriate surveillance relative thereto. The grapes for crushing delivered by handlers in fulfillment of their diversion obligations should be disposed of into livestock feed, fertilizer, or other disposition which effectively removes such grapes from normal outlets.

Grapes for crushing delivered to diversion locations or approved outlets should be documented by: (1) A weight certificate showing the net weight of the load as determined by an official weighmaster of the State of California; and (2) a sugar content determination certificate issued by the approved inspection service. Both the net weight

and sugar content of the load would be needed to compute the credit to be given against the handler's diversion and set-aside obligations. The weight determination should be made by an official weighmaster of California, and the sugar content determination by a single inspection service as provided in the order, to assure accurate and uniform determinations. The procedures for such matters as obtaining this documentation should be for determination by the committee so that it could evolve the most practical methods to fit the then current circumstances. If the grapes for crushing were delivered to the diversion location from the handler's premises, the sugar content determination would most likely have been made when the grapes were received at such premises. However, in case of direct delivery from the vineyard to the diversion location, a need would arise for the determination to be made at a roadside inspection station or the diversion location.

It should be the responsibility of the committee to provide the facilities needed at any diversion location operated by the committee to unload vehicles in which grapes for crushing would be delivered for diversion. In most cases such deliveries would be in vehicles, the unloading of which would be facilitated by use of power hoists. The expense of unloading should be a surplus disposition expense of the committee because it would be incurred in diverting surplus grapes for crushing for which the committee would be accountable to producers.

The committee should be authorized to credit against any handler's diversion obligation any grapes for crushing which a handler diverts, in accordance with procedures established by the committee with the approval of the Secretary, into outlets approved by the committee, because handlers or the committee may find suitable outlets into which grapes for crushing could be diverted directly to more advantage than would be obtained by delivery to diversion locations. Appropriate procedures and safeguards governing diversions into these outlets could best be developed if and when such outlets are found.

Disposition of grapes for crushing into diversion outlets should be for the account of the committee and any revenue from such disposition should be paid to the committee because producers or their successors in interest would have the beneficial interest in the surplus diverted.

The committee should be permitted, with the approval of the Secretary, to establish such rules and regulations as are necessary to permit a practical application of the diversion requirements. By these means it may be necessary to prescribe a small maximum permissible tolerance within which any handler may be deemed to satisfy his diversion obligation. For a handler to divert a net weight of grapes for crushing exactly equal to his diversion obligation, may be impracticable in that knowledge of the sugar content would not be available until the grapes were loaded and hauled for diversion. It may prove necessary to limit the credit which any handler may

receive against his setaside obligation for diverting grapes for crushing in excess of his diversion obligation so as to prevent reduction of the industry surplus beyond the goal set. It may be desirable to authorize the excess diversion of one handler to be credited against the diversion obligation of another handler for such reasons as permitting one handler to assist another in meeting his obligation.

Handler diversion of surplus grapes for crushing would be for the benefit of producers or their successors in interest. Therefore, such persons should bear the handlers' cost, as well as the physical and administrative costs to the committee, of such diversion. The evidence of record is insufficient to establish appropriate charges to cover such handler costs now and hence they should be developed through rule making and set forth in a schedule of charges. The committee would not have appropriate funds whereby it could pay the handlers' or its costs of such diversion. Therefore, as a practical solution and a necessary and incidental means of providing funds for effectuating handler diversion, it should be provided that compensation for handlers' costs, and the costs to the committee for handler diversion, shall be borne by producers, or their successors in interest, and shall be obtained by the method authorized in § 990.57 for setaside. So that handlers would not retain money not theirs any longer than necessary and to permit the committee to cover its costs, the producer payments remaining after deduction of handler compensation in accordance with the schedule of charges, should be paid to the committee by each handler not later than 21 days after the handler has completed his crush for the season. The costs to the committee of mandatory handler diversion including those of administration and its expenses incurred in establishing, maintaining, and operating diversion locations, should then be defrayed from the handler remittances to the committee. In view of the beneficial interest in surplus diverted, the remaining balance of the handler remittances, and any proceeds from disposition of grapes for crushing diverted by handlers, should be disbursed to the contributing producer, or their successors in interest.

(11) Section 990.62 should be amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) *Exchange and replacement*.

This new paragraph should specifically authorize the committee, when desirable to facilitate the disposition of setaside and under such limitations as will preserve the objectives of this part, to exchange any setaside item(s) for any free inventory product(s) eligible for setaside or authorize any handler to sell and deliver any free inventory product(s) into non-normal outlets and to replace such deliveries with any setaside item(s).

When a free inventory product held by handlers is more saleable in non-normal outlets than a particular setaside item, such exchange would enable the committee to make setaside disposition that would not otherwise occur. Furthermore, an exchange could avoid the substantial expense to equity holders of converting one setaside item to a more sale-

able item. For the purpose of exchanges, free inventory products to be set aside should be limited to those eligible for setaside because the order authorizes the committee to dispose of only setaside items.

The committee should be also specifically authorized to permit any handler to sell and deliver any free inventory product(s) into non-normal outlets, and to provide replacement of such deliveries with any setaside item(s). Use of such authorization would encourage handlers, the experienced sellers of industry products, to develop and expand non-normal outlets. As an example of the possible exercise of this authority, a handler could be permitted to sell concentrate in non-normal outlets before his setaside obligation for a crop year is finally established with the assurance of receiving replacement from his or other committee setaside for the quantity delivered even if such quantity exceeds his setaside obligation. As further examples, a handler could be permitted to export a type of dessert wine he is not then holding as setaside, or export a product such as table wine which may not then be currently eligible for setaside, in both cases receiving replacement from his setaside or from other holdings of the committee. Such techniques as these would allow flexibility in handlers' selling operations thereby enabling them to make sales, in both normal and non-normal outlets, which would not otherwise occur. For the purposes of such sales and replacements, "free inventory products" should not be limited to those eligible for setaside so that the industry could benefit from handlers having maximum opportunity to reduce the total industry inventory of all products of grapes for crushing.

So that the aforementioned purposes of new paragraph (d) could be accomplished, its provisions should not limit the free inventory products or the setaside items which are involved in exchanges or in sales and replacements to the same crop year of crush. However, the possible adverse effects on the objectives of this part must be considered by the committee in any exchanges or replacements.

(12) For the purpose of distributing proceeds, disposition of the setaside should be deemed, except when the committee determines that the proceeds or equity holders differ significantly, to be of the earliest unliquidated setaside until a volume equal to such setaside is disposed of.

There are now and likely will be setasides of different crop years existing at the same time, with any particular setaside consisting of a variety of products not equally saleable. Consequently, a part of the setaside of any early crop year may remain unsold when sales are made of setaside of a later crop year. If the early setaside could not be deemed liquidated until all of the products actually contained therein were disposed of, substantial delay in making final payment of net proceeds to equity holders would occur and the committee would incur considerable expense in maintaining equity records for long periods of

time. Use of the liquidation method described in the preceding paragraph would avoid such delay and expense and hence be of significant advantage to equity holders. Therefore, it should be included in the order. This method is similar to those used by cooperative marketing associations when desirable to expedite closing of pools and make final payments to producer members before all of the products thereof are sold.

Actual operation of the method is not expected to cause significant changes in the amounts per ton disbursed to equity holders from the setaside of any particular crop year. As a general rule, disposition will be on a first in, first out basis to stay within the two-year period of prepaid storage costs. Also, to a large extent, it is expected that the same producers will participate in each succeeding setaside roughly in the same proportion. However, to permit corrective action against the possibility that operation of the method in an unanticipated, future situation would be more disadvantageous than advantageous to equity holders, provision should be made in the order for the committee to depart from the method for good cause. Therefore, the new method should apply except when the committee determines that the proceeds or equity holders differ significantly.

(13) A proposal was contained in the notice of hearing to add a new § 990.74 to provide that, if under the order more than one person may be the handler of grapes for crushing or the products made therefrom, the committee, with the approval of the Secretary, may, by rules and regulations, designate the handlers upon whom, under stated conditions, any or all of the obligations of the order shall be imposed or any or all of its benefits conferred.

While the order, in general, is specific in designating the person responsible for compliance with its requirements, the definitions of "handle" (§ 990.7) and "handler" (§ 990.8) are sufficiently broad so that, in certain instances such as in toll crushing arrangements or in the case of federated cooperative associations and their member associations, two or more persons may be handlers of the same lot of grapes or the products therefrom. In these instances, the question arises which of the handlers would be responsible for meeting the requirements of the order.

The record shows how the committee is applying the various requirements of the order to handlers in those and other instances. This is being done in a manner consistent with the provisions of the order and practicable from an administrative standpoint. The record also shows that no rule on or further clarification of the matter is needed at this time. If such should later be required, it could be accomplished through rules and regulations pursuant to § 990.35(k), consistent with the provisions of the order. Therefore, the proposal is not recommended for adoption.

(14) Some of the amendatory proposals herein recommended cause the need to make certain conforming changes in the provisions of the order so that it will be in conformity with the amenda-

tory action resulting from the hearing. Each of a number of these changes as is of appreciable significance has been specifically discussed hereinbefore in connection with the amendatory proposal to which pertinent. In addition, three other conforming changes should be made in the order to accommodate the proposals for mandatory handler diversion and optional producer diversion recommended herein.

The term "grapes for crushing", as presently defined in § 990.5, would not, unless amended, include grapes, whether fresh or dried, which would be diverted under the recommended producer and handler diversion proposals because such grapes would not have been introduced into handlers' processing operations. Such grapes, otherwise qualifying as "grapes for crushing", would be diverted into non-normal outlets either directly from vineyards, handlers' premises, or other locations, without, by crushing or other acts, having been prepared for fermentation or the production of grape juice or concentrate. In view of these circumstances and so that the definition of the agricultural commodity would be of sufficient scope to permit the producer and handler diversion operations, § 990.5 should be amended by replacing the period at the end thereof with ", and includes any grapes which would have been so prepared except for diversion pursuant to §§ 990.59 or 990.60."

There should be added after the first sentence of § 990.54 a sentence to state that the handler receipts shall include those grapes for crushing processed by him, those diverted pursuant to § 990.60, and that diverted tonnage on diversion certificates issued pursuant to § 990.59 and credited to, or held by, him. Also, the first and second sentences of § 990.54 should be amended by inserting ", as adjusted to reflect creditable diversions," immediately after "the setaside equivalent". These conforming changes are necessary to recognize in § 990.54 that a handler's setaside obligation could be satisfied by diversion as well as by setaside.

For easier reading, reference, and understanding, § 990.54 should be subdivided into appropriate paragraphs by subject matter, as set forth hereinafter under recommended amendment of the order.

Section 990.43 should be amended by deleting "select as successor" and substituting therefor "select a successor". The effect would be to change the word "as" to the word "a" and thus correct a typographical error that occurred in the promulgation of the order.

Rulings on proposed findings and conclusions. The Presiding Officer announced at the hearing that interested persons would be allowed to and including April 26, 1963, to file with the Hearing Clerk proposed findings and conclusions, and written arguments or briefs, based upon evidence received at the hearing. Briefs were filed by Biscaglia Brothers Wine Co., Martin J. Gutunich, John J. Kovacevich, E. W. Landram, and Frank Lanse.

The briefs contained proposed findings, conclusions, and arguments with

respect to proposals contained in the Notice of Hearing. Every point covered in these briefs has been considered carefully, in light of the scope of the notice and the evidence in the record, in making the findings and reaching the conclusions herein set forth. To the extent that the suggested findings and conclusions contained in those briefs are inconsistent with the findings and conclusions contained herein, they are denied on the basis of the facts found and stated in connection with this recommended decision.

General findings. (1) The findings hereinafter set forth are supplementary and in addition to the findings and determinations which were made in connection with the original issuance of the order (26 F.R. 7797). Except insofar as such findings and determinations may be in conflict with the findings set forth herein, all of the said previous findings are hereby ratified and affirmed;

(2) The marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(3) The marketing agreement and order, as hereby proposed to be amended, regulate the handling of grapes for crushing produced in the production area in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as hereby proposed to be amended, are limited in application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(5) There are no differences in the production and marketing of grapes for crushing in the area covered by the marketing agreement and order, as hereby proposed to be amended, which require different terms applicable to different parts of such area; and

(6) All handling of grapes for crushing produced in the area and of the products thereof is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

Recommended amendment of the order. The following amendment of the order is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

§ 990.5 [Amendment]

1. Section 990.5 is amended by replacing the period at the end thereof with ", and includes any grapes which would have been so prepared except for diversion pursuant to §§ 990.59 or 990.60."

§ 990.43 [Amendment]

2. Section 990.43 is amended by deleting "select as successor" and substituting therefor "select a successor".

§ 990.50 [Amendment]

3. The present first sentence of § 990.50 is amended by replacing the period at the end thereof with a colon and adding: "And provided further, That, in any crop year in which the committee determines no later than September 20 and the Secretary concurs that the objectives of this part will not be affected adversely, the committee may permit handlers to receive and use some or all of the raisins that fail to meet the minimum grade and condition standards set forth in, or prescribed pursuant to, Raisin Order No. 989, as amended (Part 989 of this chapter), for reasons that exclude such raisins from coverage under crop insurance then provided by the Federal Crop Insurance Corporation."

4. The present second sentence of § 990.50 is amended to read as follows: "Such receipt and usage of residual material and of raisins shall be according to rules and regulations established by the committee with the approval of the Secretary."

§ 990.53 [Amendment]

5. Section 990.53 is amended by redesignating the present provisions thereof as paragraph (a) *Establishment* and deleting from the first sentence thereof "no earlier than September 15 nor later than September 18" and substituting therefor "no later than September 20".

6. The present first sentence of § 990.53 is amended by adding immediately after "such total crush" a comma and the phrase "including any tonnage diverted pursuant to §§ 990.59 or 990.60 but excluding that exempted from volume regulation pursuant to § 990.58,".

7. A new paragraph (b) is added to § 990.53 to read as follows:

(b) *Formula*. The committee may establish, with the approval of the Secretary, a formula for computing the free and surplus percentages it shall recommend to the Secretary pursuant to paragraph (a) of this section. An established formula shall apply until modified or terminated.

§ 990.54 [Amendment]

8. The present first sentence of § 990.54 is amended by inserting "of grapes for crushing" immediately after "of the current year's crush".

9. The following sentence is inserted immediately after the present first sentence of § 990.54: "Said receipts shall include those grapes for crushing processed by him, those diverted pursuant to § 990.60, and that diverted tonnage on diversion certificates issued pursuant to § 990.59 and credited to, or held by, him."

10. The present first and second sentences of § 990.54 are amended by inserting ", as adjusted to reflect creditable diversions," immediately after "the setaside equivalent".

11. The present second sentence of § 990.54 is amended by deleting "21" and substituting therefor "23.9".

12. The present second sentence of § 990.54 is amended (a) by inserting "table wine as may be permitted pursuant to § 990.58(c)," immediately after

"Brix," and (b) by inserting "(including table wine for all handlers)" immediately after "or such other items".

13. The following sentence is inserted immediately after the present sixth sentence of § 990.54: "Any substituted product shall be of the same crop year's crush as the replaced item unless the committee, with the approval of the Secretary, has established rules and regulations permitting substituted products to be of the crush of other crop year(s)."

14. Section 990.54 is revised to read as follows:

§ 990.54 Setaside.

(a) *Requirement to set aside and hold*. Whenever free and surplus percentages for grapes for crushing have been established for a crop year by the Secretary, each handler shall set aside and hold in storage, within the State of California, for the account of the committee, free and clear of all liens, other than those resulting from Federal gallonage tax provisions, proof gallons of products, or the concentrate equivalent thereof, of the current year's crush of grapes for crushing equal to the setaside equivalent, as adjusted to reflect creditable diversions, of the established surplus percentage applied to the total receipts of grapes for crushing at premises within the State of California controlled or operated by him. Said receipts shall include those grapes for crushing processed by him, those diverted pursuant to § 990.60, and that diverted tonnage on diversion certificates issued pursuant to § 990.59 and credited to, or held by, him.

(b) *Form of setaside*. By January 31 the setaside equivalent, as adjusted to reflect creditable diversions, shall be in the form, at the handler's option, of either dessert wine, other than special natural, of not less than 19.5 percent nor more than 23.9 percent alcohol by volume, high proof of not less than 185 degrees proof, concentrate of not less than 68 degrees Brix, table wine as may be permitted pursuant to § 990.58(c), or such other items (including table wine for all handlers) as the committee may establish with the approval of the Secretary. On any approved item, the committee, in its discretion, may permit storage, in adequate volumes, at less than specified levels of alcohol or sugar concentration, if the handler so desiring to store undertakes in writing to deliver, on demand, at the specified levels.

(c) *Conversion factors*. In determining his gallonage setaside, each handler shall use conversion factors established by the committee with the approval of the Secretary.

(d) *Shrinkage or loss*. Setaside obligations shall be adjusted from time to time to recognize such normal shrinkage or loss as the committee may determine with the approval of the Secretary.

(e) *Substitution by handlers*. Upon establishing the January 31 setaside, a handler may substitute any item held for the account of the committee upon prior notice to the committee of intent to withdraw, to substitute, and to withhold the equivalent in another category of eligible setaside: *Provided*, That the right to substitute may be suspended by

the committee to facilitate disposition of setaside. Any substituted product shall be of the same crop year's crush as the replaced item unless the committee, with the approval of the Secretary, has established rules and regulations permitting substituted products to be of the crush of other crop year(s).

(f) *Quality and storage*. All items set aside shall be of marketable quality, shall be stored to preserve their quality, and shall meet the standards of identity, quality, and condition established under Federal or State of California laws or regulations, or as such may be modified for the purposes of this part by the committee with the approval of the Secretary. Handlers shall use good commercial practices in caring for setaside items and be liable for losses of setaside resulting from lack of due care.

(g) *Storage containers*. Setaside items need not be in containers separate and apart from other like products held by the handler but each container with setaside shall be such as will maintain the condition of the item, shall be so labeled or marked as the committee may direct, and no withdrawals therefrom shall be made below the handler's effective setaside obligation.

(h) *Delivery*. A handler shall commence delivery to the committee or its designee, upon five days' notice of any or all setaside items held for the account of the committee and at such rate as may be practicable.

15. Section 990.57 is amended to read as follows:

§ 990.57 Handler compensation.

Each handler shall be compensated for receiving, processing, storing, and such other costs relating to the setaside as the committee may deem to be appropriate, in accordance with charges established as soon as practicable after the beginning of the crop year by the committee with the approval of the Secretary. Such payments shall be borne by the producers, or their successors in interest, and may be deducted from any moneys owed by handlers to such persons. Costs of storing any setaside held by a handler after the second crop year of setaside shall be paid by the committee from setaside proceeds. Whenever setaside is removed from a handler's premises, whether due to committee disposition, handler request, or other reason, the handler shall pay to the committee any unearned charges on the setaside removed in accordance with a schedule of such unearned charges established by the committee with the approval of the Secretary. A handler may request the committee to remove setaside from his premises. The committee shall comply with the request within a reasonable time consistent with the availability of suitable storage and upon the handler agreeing to pay to the committee the difference between (a) the costs to the committee of removal plus any costs of storage subsequent to removal to the end of the second crop year of setaside, and (b) any unearned charges paid by the handler to the committee at the time of removal. Upon any removal due to a handler request the

handler shall forfeit, to the extent of the removed volume, his pro rata share in any offer to sell setaside items and such share shall be allocated to the successor storing handlers.

§ 990.58 [Amendment]

16. A new paragraph (c) is added to § 990.58 to read as follows:

(c) Any handler may submit to the committee an application requesting that he be permitted to set aside and hold table wine in satisfaction of his setaside obligation and furnishing such information with respect to his request as the committee may require. Until table wine is established pursuant to § 990.54 as an eligible setaside item for all handlers, the committee shall approve the handler's application if he is currently neither an operator of a distilled spirits plant nor of a concentrating facility and meets such other condition(s) as may be prescribed by the committee with the approval of the Secretary. Upon approval of his application, the handler may, so long as he continues to qualify, set aside and hold for the account of the committee table wine which shall be subject to the provisions of this part applicable to setaside items.

17. A new § 990.59 is added to the order to read as follows:

§ 990.59 Optional producer diversion.

(a) *Voluntary principle.* No producer shall be required to divert from sale or delivery to handlers all or any portion of the grapes for crushing produced by him.

(b) *Establishment.* Upon the committee adopting an operations plan which would tend to effectuate the declared policy of the act and which would provide for adequate setaside for stabilization reserve purposes, the committee may recommend to the Secretary diversion operations to issue certificates, for use in satisfying setaside obligation, to producers who voluntarily divert specified grapes for crushing of that crop. If, on the basis of the committee recommendation, other information, and the availability of administrative rules and regulations, the Secretary concurs that optional producer diversion should be permitted, he shall authorize such diversion operations.

(c) *Eligible diversions.* Eligible diversions of grapes for crushing are: (1) Removal of grapes from the vines when the grapes are so immature as to be unfit for use or sale for any normal purpose (green dropping); (2) delivery of grapes to a diversion location approved or established by the committee; and (3) such other methods of diversion as are authorized by the committee with the approval of the Secretary.

(d) *Issuance and use of diversion certificates.* After diversion operations are authorized with respect to a grape crop, any producer may, upon receiving committee approval of his application, divert grapes for crushing within prescribed limits and receive therefor diversion certificates which may be submitted in lieu of setaside. The committee shall issue to the producer applicant and made out

in his name diversion certificates indicative of sugar weight diverted. In establishing the January 31 setaside, each handler shall deduct from his setaside obligation all credits he then holds in the form of diversion certificates and shall physically set aside the balance of the obligation. At the same time, the certificates shall be presented to the committee. Said setaside obligation shall be that obtained by applying the surplus percentage to the sum of his receipts of grapes for crushing and the tonnage shown on diversion certificates, all in terms of proof gallons. Should any handler acquire unused or partly unused diversion certificates subsequent to January 31, he may present such certificates to the committee and receive in exchange setaside, equivalent to the unused credit, for use in free tonnage outlets upon payment to the committee of the applicable charge, levied pursuant to § 990.57, for receiving, processing, storing, and other costs relating to that setaside. The committee, with the approval of the Secretary, shall establish rules and regulations covering the issuance, transfer, and use of diversion certificates.

(e) *Payment for committee's diversion expenses.* Prior to the delivery by the committee of a diversion certificate to a producer, he shall pay to the committee the expenses incurred by it. Such expenses shall be in accordance with an established schedule of charges.

(f) *Participation in proceeds from diversion and setaside.* If any revenue is obtained by the committee from diversion of grapes for crushing, it shall disburse the net proceeds to the producers delivering such grapes for crushing. The proceeds from and costs of each method of diversion shall be kept separate. Disbursement shall be on the basis of the sugar content of tonnage delivered by each producer. Whenever proceeds from the setaside of any crop year exceed the total producer deduct pursuant to § 990.57 and producer delivery costs of grapes in setaside, the committee may, with the approval of the Secretary, provide for the sharing in such excess by all participants in the diversion or setaside of that crop year. For this purpose, all producer tonnage delivered to handlers and subject to the producer deduct shall be deemed to be setaside tonnage.

18. A new § 990.60 is added to the order to read as follows:

§ 990.60 Mandatory handler diversion.

(a) *Diversion percentage.* Whenever the committee concludes that despite any diversion of grapes for crushing pursuant to § 990.59, the delivery of such grapes will cause a burdensome total setaside from all crop years and that the diversion of a portion of handler receipts to non-normal disposition would tend to effectuate the declared policy of the act, it may recommend such to the Secretary. Such recommendation shall be made at the time the initial free and surplus percentages for the crop year are recommended and shall include the basis of the recommendation and the

percentage of each handler's total receipts of either fresh or all grapes for crushing for a portion or all of the crop year, other than those exempted from volume regulation pursuant to § 990.58, which it is recommended that each handler be required to divert. If, on the basis of the committee's recommendation and other information, the Secretary concurs in the need to divert a portion of handler receipts, he shall establish the appropriate diversion percentage as soon as practicable.

(b) *Diversion obligation.* Whenever a diversion percentage has been established in a crop year, each handler shall divert in accordance with this part a quantity of the appropriate grapes for crushing of a sugar content equal to that obtained by multiplying the total sugar tons of such grapes for crushing received by him in that crop year, other than those exempted from volume regulation pursuant to § 990.58, by the diversion percentage.

(c) *Satisfaction of obligations.* Whenever a diversion percentage has been established in a crop year, each handler's diversion and setaside obligation for that crop year shall be satisfied in an amount equal to the sugar weight or proof gallon equivalent of the grapes for crushing diverted by him including any diverted prior to such establishment with the knowledge and prior approval of the committee. For purposes of computing the handler's setaside obligation, grapes for crushing diverted by him, whether or not received at his premises, shall be included in determining his total receipts of grapes for crushing. Conversion factors established by the committee pursuant to § 990.54 shall be used in determining the proof gallon equivalent of the grapes for crushing diverted by him.

(d) *Diversion procedures.* Whenever a diversion percentage has been established for a crop year, the committee shall designate diversion locations at points reasonably accessible to handlers or approve outlets to which handlers may deliver grapes for crushing for crediting against their diversion obligations. The grapes for crushing delivered shall be documented by: (1) A weight certificate showing the net weight of the load as determined by an official weighmaster of the State of California; and (2) a sugar content determination certificate issued by the approved inspection service. It shall be the responsibility of the committee to provide the facilities needed at any diversion location operated by the committee to unload vehicles. The outlets may include the livestock feed, fertilizer, or other disposition which effectively removes the grapes for crushing from normal outlets. Disposition therein shall be for the account of the committee and any revenue from such disposition shall be paid to the committee.

(e) *Other procedures.* The committee may, with the approval of the Secretary, establish rules and regulations which, among other things, may: (1) Prescribe

PROPOSED RULE MAKING

DEPARTMENT OF LABOR

Division of Public Contracts

[41 CFR Part 50-201]

APPRENTICES, HANDICAPPED PERSONS, AND STUDENT-LEARNERS

Proposed Tolerance for Minimum Wage Determinations

Under authority in section 6 of the Walsh-Healey Public Contracts Act (41 U.S.C. 40), I proposed to delete 41 CFR 50-201.1103, and to revise 41 CFR 50-201.1102 to read as set forth below. The purposes of the amendments are (1) to provide a tolerance from minimum wage determinations for student-learners, similar to those now in effect for apprentices and handicapped workers, and (2) to consolidate the provisions for these three classes of workers into one section of the Code of Federal Regulations.

Any person interested in this proposal may submit a written statement of data, views or arguments regarding it within 15 days after this notice is published in the FEDERAL REGISTER. Such submissions should be directed to the Secretary of Labor, United States Department of Labor, Washington 25, D.C.

§ 50-201.1102 Tolerance for apprentices, student-learners, and handicapped workers.

(a) Apprentices, student-learners, and workers whose earning capacity is impaired by age or physical or mental deficiencies or injuries may be employed at wages lower than the prevailing minimum wages, determined by the Secretary of Labor pursuant to section 1(b) of the Public Contracts Act, in accordance with the same standards and procedures as are prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, and by the regulations of the Administrator of the Wage and Hour and Public Contracts Division of the Department of Labor issued thereunder (29 CFR Parts 520, 521, 524, 525, and 528).

(b) Any certificate in effect pursuant to such regulations shall constitute authorization for employment of that worker under the Public Contracts Act in accordance with the terms of the certificate, insofar as the prevailing minimum wage is concerned.

(c) The Administrator is authorized to issue certificates under the Public Contracts Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, at appropriate rates of compensation and in accordance with the standards and procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(d) The Administrator is also authorized to withdraw, annul, or cancel such certificates in accordance with the regulations set forth in 29 CFR Parts 525 and 528.

(Sec. 6, 49 Stat. 2038; 41 U.S.C. 40)

Signed at Washington, D.C., this 21st day of June 1963.

W. WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 63-6809; Filed, June 26, 1963; 8:57 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 42]

[Notice 63-25; Docket No. 1808]

IRREGULAR AND OFF-ROUTE AIR CARRIERS

International and Overseas Operations; Proposed Rest Periods and Duty Time Limitations for Flight Crews, and Use of Additional Airmen

The Federal Aviation Agency has under consideration a proposal to amend Part 42 of the Civil Air Regulations to prescribe specific ground rest periods and duty time limitations for flight crews of three or more pilots and additional airmen, as required, engaged in overseas and international operations conducted by supplemental air carriers and commercial operators under Part 42 of the Civil Air Regulations. This proposal is considered necessary as an interim measure pending an overall revision of the flight time limitations applicable to all air carrier operations.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the notice or docket number and be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, Room A-103, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before August 26, 1963, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Presently the flight time limitations applicable to overseas and international flights of air carriers and commercial operators which are governed by Part 42 of the Civil Air Regulations and related operations specifications permit great flexibility in the scheduling of flight crewmembers. At the time the limitations were originally authorized, it was considered that this flexibility was necessary due to the nature of international operations, the unsanitary and

a maximum permissible tolerance within which any handler is deemed to have satisfied his diversion obligation; (2) limit the credit which any handler may receive against his setaside obligation for diverting grapes for crushing in excess of his diversion obligation; or (3) permit the excess diversion of one handler to be credited against the diversion obligation of another handler.

(f) *Diversion costs and proceeds.* Each handler shall be compensated for diversion costs in accordance with a schedule of charges established by the committee with the approval of the Secretary. Such handler compensation and the costs to the committee of handler diversion shall be borne by the producers or their successors in interest. Moneys necessary to meet all such costs shall be obtained by the method authorized in § 990.57 for setaside. The producer payments remaining after deduction of handler compensation shall be paid to the committee by each handler not later than 21 days after such handler has completed his crush for the season. The costs to the committee of mandatory handler diversion, including those of administration and its expenses incurred in establishing, maintaining, and operating diversion locations, shall be defrayed from such handler remittances to the committee. The remaining balance of the handler remittances, and any proceeds from disposition of grapes for crushing pursuant to this section, shall be disbursed to the contributing producers, or their successors in interest.

§ 990.62 [Amendment]

19. The first sentence of paragraph (d) of § 990.62 is amended by changing "The" at the beginning of the first sentence to "the" and adding "Except as may be provided pursuant to § 990.59 (f)," before the beginning of said sentence.

20. The following sentence is inserted after the present first sentence of paragraph (d) of § 990.62: "For the purpose of distributing proceeds, disposition of the setaside shall be deemed, except when the committee determines that the proceeds or equity holders differ significantly, to be of the earliest unliquidated setaside until a volume equal to such setaside is disposed of."

21. Section 990.62 is amended by redesignating paragraph (d) thereof as paragraph (e) and adding a new paragraph (d) to read as follows:

(d) *Exchange and replacement.* When desirable to facilitate the disposition of setaside, the committee may, under such limitations as will preserve the objectives of this part, exchange setaside item(s) for free inventory product(s) eligible for setaside, or authorize any handler to sell and deliver any free inventory product(s) into non-normal outlets and to replace such deliveries with any setaside item(s).

Dated: June 21, 1963.

JOHN P. DUNCAN, Jr.,
Assistant Secretary.

[F.R. Doc. 63-6790; Filed, June 26, 1963; 8:52 a.m.]

often unhealthy living conditions which existed at some intermediate stops, the types of airplanes used, the length of the flights, and the size and type of flight crews utilized.

These limitations provide that members of flight crews of three or more pilots and additional airmen, as required, may not be aloft as such crewmembers more than 350 hours in any 90 consecutive days or more than 1,000 hours in any 12-month period. However, there is no daily limit to the number of hours that such flight crewmembers may be aloft or on duty, except that there is a limitation on hours of duty on the flight deck of flight engineers, radio operators, and navigators. Otherwise, the limitations merely provide that the flight hours of such crews shall be scheduled in such a manner as to provide for adequate rest periods on the ground while the crewmembers are away from the base. In light of experience, questions have arisen as to what constitutes "adequate" ground rest periods for members of augmented flight crews, employed by carriers to whom the flight time limitations of Part 42 are applicable, while away from their home base. Some flight crews have been required to be on duty for excessive periods of time without any rest. It appears that it may be necessary to prescribe more specific requirements for ground rest periods than those presently applicable.

Consideration is being given to limiting to 30 hours the maximum number of hours of "continuous duty" for which a member of a flight crew of three or more pilots and additional airmen may be scheduled on overseas or international flights, irrespective of the number of such crewmembers in the flight crew and the fact that sleeping facilities exist on board the airplane.

In order to indicate clearly what is meant by "continuous duty," it is proposed to define "continuous duty" as the entire period of time commencing when the flight crewmember goes on duty and continuing until he is released from duty for a rest period of not less than 10 consecutive hours on the ground.

This concept of duty time would include any rest periods of less than 10 hours.

Consideration is also being given to a specific requirement of a minimum period of 16 hours of rest on the ground when a member of such a flight crew has actually been on duty in excess of 24 continuous hours whether scheduled or not. However, the rest is not required to be given until the completion of the scheduled duty.

While "deadhead" transportation is not now considered to be duty time, the Agency is concerned over the extent to which some multiple crews are being transported prior to assuming flight duties. Due to the fact that all travel is tiresome to a degree, as the result of noise, vibration, dry air, recirculated air, and subnormal sleeping conditions, "deadhead" transportation undoubtedly induces fatigue to some extent. The Agency believes that a portion of such "deadhead" time should be considered as duty time in order to assure that flight

crewmembers are sufficiently rested to carry out their assigned flight duties safely. Therefore, consideration is being given to requiring that one-half of such deadhead travel time be considered as duty time whenever the deadhead transportation exceeds 4 hours and is not followed by a ground rest period of at least 10 hours prior to flight duty.

It is the Agency's intention to prescribe all rules pertaining to flight time limitations in the air carrier operating parts of the Civil Air Regulations and to delete from the air carriers' operations specifications such rules pertaining to these limitations as now exist therein. However, in view of the above-mentioned overall revision of all flight time limitation rules, such action is not contemplated in conjunction with this proposed interim revision of the flight time rules applicable to certain air carrier operations conducted pursuant to Part 42.

The format of any final rules adopted pursuant to this proposal will be subject to such changes as may be necessary for recodification under the Agency's recodification program announced in Draft Release 61-25 (26 F.R. 10698).

In consideration of the foregoing, it is proposed to amend Part 42 of the Civil Air Regulations as hereinafter set forth.

These amendments to Part 42 of the Civil Air Regulations are proposed under the authority of sections 313(a), 601, and 604(a) of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 778; 49 U.S.C. 1354, 1421, 1424).

1. Redesignate present § 42.49 as paragraph (e) of § 42.48.

2. By changing the heading of § 42.48 to read as follows:

§ 42.48 Flight time limitations for pilots and flight engineers on large aircraft.

3. Add a new § 42.49 to read as follows:

§ 42.49 Overseas and international flights.

(a) Any provisions in operations specifications notwithstanding, no air carrier or commercial operator to whose overseas or international operations the flight time limitations of this part apply, directly or by reference and incorporation, may, in such operations, schedule any flight crewmember of a flight crew of three or more pilots and additional airmen, as required, to be on continuous duty in excess of 30 hours. A crewmember will be considered as being on continuous duty from the time he goes on duty until the time he is released from duty for a period of rest of 10 or more consecutive hours on the ground.

(b) If any flight crewmember of such a flight crew is actually on continuous duty in excess of 24 hours, whether scheduled or not, during any one scheduled duty period, he must receive at least 16 hours for rest on the ground after completion of the last flight scheduled for that scheduled duty period, before being assigned any further flight duty.

(c) If any member of such a crew is required to engage in deadhead transportation in excess of 4 hours before commencing flight duty, one-half of the time spent in deadhead transportation must be treated as duty time for pur-

poses of determining compliance with duty time limitations, unless he is given not less than 10 hours for rest on the ground before being assigned to flight duty.

Issued in Washington, D.C., on June 20, 1963.

W. LLOYD LANE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 63-6773; Filed, June 26, 1963; 8:47 a.m.]

[14 CFR Part 61 [New]]

[Notice 63-24; Docket No. 1807]

CERTIFICATION OF PILOTS AND FLIGHT INSTRUCTORS

Proposed Prerequisites to Written Examinations

The Federal Aviation Agency has under consideration a proposal to amend Part 61 [New] of the Federal Aviation Regulations to prescribe prerequisites for the taking of certain written examinations.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Notice or Docket number and be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, Room A-103, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before August 26, 1963, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This is a proposal to establish prerequisites for the taking of written examinations for pilot and flight instructor certificates and ratings. Part 61 [New] which prescribes requirements for issuing these certificates and ratings contains prerequisites for the taking of the airline transport pilot written examination. However, there are no prerequisites for taking a written examination for a private, commercial, or flight instructor certificate or instrument rating. This absence of prerequisites has resulted in a practice of taking the examinations for the purpose of disclosing the contents to others, rather than fulfilling the requirements for a certificate. Thus, some persons have taken the written examination appropriate to a certificate which they already hold. In many instances this activity has contributed to the preparation of "sample" examinations and "keys" which are sold to prospective pilot certificate applicants. Such applicants then concentrate on learning the keys or answers to specific questions instead of obtaining a comprehensive knowledge of the aeronautical material which they are required to know in order to properly exercise the

privileges of their pilot certificates. This method of passing the required written examinations minimizes the effectiveness of such examinations and adversely affects safety in air commerce.

At Air-Share meetings it was recommended that "reasonable" prerequisites to the taking of written examinations required by the Federal Aviation Regulations should be established as a partial solution to this problem. In order to limit admission to the examinations to bona fide students, it was recommended that only persons who have had flight training be allowed to take the written examination. This recommendation appears reasonable. However, it appears that persons who have not had flight training but have completed an appropriate pilot ground school training course sponsored by a high school, college, or FAA-approved ground school should also be permitted to take the written examination prior to their flight training. Accordingly, the proposed amendment would require flight or ground training as a prerequisite

to the pilot written examinations. Applicants for the written examinations required by § 61.31 (military competence) and § 61.33 (foreign pilots) would be exempted from the provisions of the proposed amendment because of the special circumstances involved.

In consideration of the foregoing, it is proposed to amend Part 61 of the Federal Aviation Regulations (14 CFR Part 61) by adding a new § 61.20 to read as follows:

§ 61.20 Prerequisites for written examinations.

(a) To be eligible for any written test required by this part, except those required by §§ 61.31 and 61.33, an applicant must:

(1) Present satisfactory evidence of completion of a college or high school ground school course or an FAA-approved ground school course on the matters to be tested or

(2) Present evidence that he has soloed an aircraft, if applying for a private pilot certificate or

(3) Hold at least private pilot certificate or have at least 50 hours of flight instruction and solo flight time, if applying for a commercial pilot certificate, flight instructor certificate, or instrument rating

(b) No person may apply for a written test for a certificate or rating if:

(1) He already holds that or a higher certificate or rating, or

(2) He has already passed that written test,

unless the Administrator or an applicable regulation requires it.

These amendments are proposed under the authority of sections 313(a), 601 and 602 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1422).

Issued in Washington, D.C., on June 20, 1963.

W. LLOYD LANE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 63-6772; Filed, June 26, 1963; 8:46 a.m.]

Notices

DEPARTMENT OF JUSTICE

Office of Alien Property

HILDA COHEN AND EDGAR P. SONNEBORN

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Hilda Cohen, 42-54 Judge Street, Elmhurst, Long Island, New York; \$1,533.64 in the Treasury of the United States.

Edgar P. Sonneborn, 17 West Hill Court, Millfield Lane, Highgate, London, N.6, England; Claim No. 42158, Vesting Order No. 937; \$63.91 in the Treasury of the United States.

Executed at Washington, D.C., on June 20, 1963.

For the Attorney General.

[SEAL]

PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 63-6762; Filed, June 26, 1963; 8:45 a.m.]

FRANZ RUELICH ET AL.

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provisions for taxes and conservatory expenses, and also subject to the provisions of Treasury Circular No. 655, as amended, 31 CFR 211.3, and of Executive Order No. 8389, as amended, 5 F.R. 1400, 6 F.R. 2897:

Claimant, Claim No., Property, and Location

Franz Ruelich, Naundorf I, Kreis Jessen, Elster, Germany; Claim No. 42534, Vesting Order No. 8933; \$2,793.50 in the Treasury of the United States.

Anna Schernstein-Wabera, Thale am Harz, Walter Rathenau Str. 10, Sachsen-Anhalt, Germany; Claim No. 42472, Vesting Order No. 8933; \$2,328.50 in the Treasury of the United States.

Wenzel Matzek, Ottendorf No. 57, Kreis, Stadtroda/Thuringen, Germany; Claim No. 44815, Vesting Order No. 8933; \$2,328.50 in the Treasury of the United States.

Dated at Washington, D.C., on June 21, 1963.

For the Attorney General.

[SEAL]

PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 63-6763; Filed, June 26, 1963; 8:45 a.m.]

STEPHANIA IAZDAUSKIENE AND HELEN NORKIENE

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses and also subject to the provisions of Treasury Circular No. 655, as amended, 31 CFR 211.3 and of Executive Order No. 8389, as amended, 5 F.R. 1400, 6 F.R. 2897.

Claimant, Claim No., Property, and Location

Stephania Iazdauskiene, Village of Burchishkai, Kelmes ryon, Lithuania, Claim No. 42232, Custody Acct. No. 40-100395; \$5,137.03 in the Treasury of the United States.

Helen Norkiene, a/k/a, Helen Norkene, Kunigiskies Rajon, Kelme, Lithuania; Claim No. 42234, Custody Acct. No. 43-100396; \$882.79 in the Treasury of the United States.

Dated at Washington, D.C., on June 20, 1963.

For the Attorney General.

[SEAL]

PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 63-6764; Filed, June 26, 1963; 8:45 a.m.]

JOSEFINA VONDRA

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses, and also subject to the provisions of Treasury Circular No. 655, as amended, 31 CFR 211.3, and of Executive Order No. 8389, as amended, 5 F.R. 1400, 6 F.R. 2897:

Claimant, Claim No., Property, and Location

Josefina Vondra, Cimburkova 24, Prague XI, Czechoslovakia; Claim No. 41283, Vest-

ing Order No. 4671; \$52.74 in the Treasury of the United States.

Executed at Washington, D.C., on June 20, 1963.

For the Attorney General.

[SEAL]

PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 63-6765; Filed, June 26, 1963; 8:45 a.m.]

JOSEPH AND JAROSLAV ZICHA

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses, and also subject to the provisions of Treasury Circular No. 655, as amended, 31 CFR 211.3, and of Executive Order No. 8389, as amended, 5 F.R. 1400, 6 F.R. 2897:

Claimant, Claim No., Property, and Location

Joseph Zicha, a/k/a Josef Zicha, 39 Mlynska, Luhacovice, Czechoslovakia; Claims Nos. 36472 and 36477; \$969.19 in the Treasury of the United States.

Jaroslav Zicha, Luhacovice No. 360, Czechoslovakia; Claims Nos. 36472 and 36478; \$969.19 in the Treasury of the United States.

Dated at Washington, D.C., on June 20, 1963.

For the Attorney General.

[SEAL]

PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 63-6766; Filed, June 26, 1963; 8:45 a.m.]

OTTO APPELT

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses and also subject to the provisions of Treasury Circular No. 655, as amended, 31 CFR 211.3, and of Executive Order No. 8389, as amended, 5 F.R. 1400, 6 F.R. 2897:

Claimant, Claim No., Property, and Location

Otto Appelt, Ul. Bozeny Nemcove, No. 15, Liberec V., Czechoslovakia; Claim No. 63343,

Vesting Order No. 1669; \$668.34 in the Treasury of the United States.

Executed at Washington, D.C., on June 21, 1963.

For the Attorney General.

[SEAL]

PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 63-6767; Filed, June 26, 1963;
8:45 a.m.]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[AA 643.3-m]

PORTLAND CEMENT FROM POLAND

Fair Value Determination

JUNE 21, 1963.

A complaint was received that Portland cement, other than white, non-staining Portland cement, from Poland was being sold in the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that Portland cement, other than white, nonstaining Portland cement, from Poland is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. All sales for exportation to the United States were outright buyer-seller transactions. No relationship as defined in section 207 of the Antidumping Act of 1921 was found to exist. Since sales for home consumption in Poland are not made in the ordinary course of trade within the meaning of the statute and Polish sales to third countries were considered to be inadequate as a basis of comparison for fair value purposes, it was determined, therefore, that the appropriate comparison for such purposes was between purchase price and constructed value.

Purchase price was calculated on the basis of the selling price to the United States, f.o.b. Polish port, packed and stowed. Included inland freight, stowage charges and packing costs were deducted from such prices to arrive at an unpacked, ex-plant purchase price.

The computation of constructed value was made on the basis of the sales price for export to the United States charged by a West European country. This sales price was determined to be not less than the home market price for such cement when reduced to an unpacked, ex-plant basis by deducting included freight charges and packing costs therefrom. It was, in addition, generally in line with other West European country prices.

Although purchase price was found to be slightly lower than constructed value when arrived at on this basis, it was determined that the difference involved was not more than insignificant.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL]

JAMES A. REED,
Assistant Secretary of the Treasury.
[F.R. Doc. 63-6797; Filed, June 26, 1963;
8:54 a.m.]

[AA 643.3-H]

TITANIUM DIOXIDE FROM FRANCE

Determination of Sales at Less Than Fair Value

JUNE 20, 1963.

A complaint was received that titanium dioxide from France was being sold in the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that titanium dioxide from France is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

The United States Tariff Commission is being advised of this determination.

Statement of reasons. The information received indicated that shipments to the United States were pursuant to outright sales transactions between firms not related within the meaning of section 207 of the Antidumping Act.

The quantity sold in the home market for home consumption was sufficient to form a basis for the fair value comparison.

Accordingly, the appropriate comparison for fair value purposes is between purchase price and home market price.

Purchase price was calculated on the basis of the selling price at the factory, packed, less cash discount.

Home market price was calculated on the basis of the selling price, delivered, packed, with an addition because of slightly lower packing costs than incurred in sales for exportation to the United States, and deductions for included inland charges. Allowances were made for the expense incurred by the manufacturer for technical assistance provided to customers in the home market, for a tonnage rebate granted on sales in the home market, for quantities equivalent to those sold for exportation to the United States, and for interest cost resulting from credit terms in the home market.

Purchase price was found to be less than the adjusted home market price.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL]

JAMES A. REED,
Assistant Secretary of the Treasury.
[F.R. Doc. 63-6798; Filed, June 26, 1963;
8:54 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ARIZONA

Notice of Termination of Proposed Withdrawal and Reservation of Lands

Notice of an application Serial No. Arizona 032165, for withdrawal and reservation of lands was published as F.R. Doc. 62-12841 on page 12981 of the issue for December 29, 1962. The applicant agency has canceled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations in 43 CFR Part 295, such lands will be at 10:00 a.m. on July 18, 1963, relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

GILA AND SALT RIVER BASE MERIDIAN, ARIZONA
TONTON NATIONAL FOREST

T. 6 N., R. 7 E.,
Sec. 26, NW ¼.
T. 2 N., R. 9 E.,
Sec. 5, SE ¼.

Dated: June 18, 1963.

MARTIN W. BUZAN,
Acting State Director.

[F.R. Doc. 63-6782; Filed, June 26, 1963;
8:49 a.m.]

SOUTH DAKOTA

Notice of Proposed Withdrawal and Reservation of Lands

JUNE 21, 1963.

Department of the Army has filed an application, Serial Number Montana 058489 for the withdrawal of the lands described below, from all forms of appropriation under the public land laws. The applicant desires the land for use in connection with the construction, operation and maintenance of the Big Bend Dam and Reservoir Project, South Dakota.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 1245 North 29th Street, Billings, Montana.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

FIFTH PRINCIPAL MERIDIAN, SOUTH DAKOTA

T. 110 N., R. 77 W.,
Sec. 22, Lot 7; Sec. 35, Lot 1.

BLACK HILLS MERIDIAN, SOUTH DAKOTA

T. 4 N., R. 32 E.,
Sec. 4, Lot 1.

The areas described aggregate 14.25 acres.

R. PAUL RIGTRUP,
Manager, Land Office.

[F.R. Doc. 63-6780; Filed, June 26, 1963;
8:49 a.m.]

ARIZONA

Notice of Termination of Proposed Withdrawal and Reservation of Lands

Notice of an application Serial No. Arizona 031722, for withdrawal and reservation of lands was published as F.R. Doc. 62-10113 on page 10002 of the issue for October 11, 1962. The applicant agency has canceled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations in 43 CFR, Part 295, such lands will be at 10:00 a.m. on July 18, 1963, relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

GILA AND SALT RIVER BASE MERIDIAN, ARIZONA
TONTON NATIONAL FOREST

T. 6 N., R. 7 E.,
Sec. 21, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$,
SE $\frac{1}{4}$.

T. 3 N., R. 8 E.,
Sec. 23, S $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 26, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$.

Dated: June 18, 1963.

MARTIN W. BUZAN,
Acting State Director.

[F.R. Doc. 63-6781; Filed, June 26, 1963;
8:49 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

ARKANSAS

Extension of Period for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of Public Law 87-128 (7 U.S.C. 1961) it has been determined that in Searcy County, Arkansas, the natural disaster for which said county was designated (27 F.R. 5883) has resulted in a continuing need in that county for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named county after June 30, 1964, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 21st day of June 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-6786; Filed, June 26, 1963;
8:51 a.m.]

COLORADO

Extension of Period for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of Public Law 87-128 (7 U.S.C. 1961) it has been determined that in the hereinafter-named counties in the State of Colorado, the natural disasters for which said counties were designated (27 F.R. 7579, 12591) and subsequent natural disasters have resulted in a continuing need in those counties for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

COLORADO

Boulder. Weld.
Larimer.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after June 30, 1964, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 21st day of June 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-6787; Filed, June 26, 1963;
8:51 a.m.]

NORTH CAROLINA

Designation of Area for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in Currituck County, North Carolina, a natural disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named county after June 30, 1964, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 21st day of June 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-6788; Filed, June 26, 1963;
8:51 a.m.]

SOUTH CAROLINA

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of South Carolina, a natural disaster has caused

a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

SOUTH CAROLINA

Edgefield. Saluda.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after June 30, 1964, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 21st day of June 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-6789; Filed, June 26, 1963;
8:51 a.m.]

MISSISSIPPI

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of Mississippi natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

MISSISSIPPI

Adams.	Marion.
Clarke.	Neshoba.
George.	Newton.
Jackson.	Oktibbeha.
Jasper.	Rankin.
Jones.	Simpson.
Lamar.	Smith.
Lauderdale.	Walthall.
Lawrence.	Wilkinson.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after June 30, 1964, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 24th day of June 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-6810; Filed, June 26, 1963;
8:57 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

[Dept. Order 179 [Rev.]]

OFFICE OF TECHNICAL SERVICES

General Functions and Delegation of Authority

The following order was issued by the Secretary of Commerce on June 13, 1963. This material supersedes the material appearing at 27 F.R. 8053 of August 16, 1962.

SECTION 1. Purpose. The purpose of this order is to delegate authority to the Director and to describe the general functions of the Office of Technical Services.

SEC. 2. General. .01 The Office of Technical Services, established by Department Order No. 179, is hereby continued as a constituent unit in the Office of the Secretary.

.02 The Office of Technical Services shall be headed by a Director who shall report and be responsible to the Assistant Secretary of Commerce for Science and Technology. The Director shall be assisted by a Deputy Director who shall perform the functions of the Director during the latter's absence.

SEC. 3. Delegation of authority. Pursuant to the authority vested in the Secretary of Commerce by law (including Reorganization Plan No. 5 of 1950), and subject to such policies and directives as the Secretary of Commerce and the Assistant Secretary for Science and Technology may prescribe, the Director, Office of Technical Services, is hereby delegated the authority vested in the Secretary of Commerce by the Act of September 9, 1950 (64 Stat. 823; 15 U.S.C. 115) authorizing the collection and dissemination of scientific, technical and engineering information.

SEC. 4. General functions. The general functions of the Office of Technical Services are related to the encouragement of innovation through the application of science and technology. To this end the Office shall carry out the following programs of a scientific and technical nature:

1. Collecting, organizing, disseminating, and interpreting scientific, technical and engineering information, including information obtained from abroad. Such information shall be made available to other Government agencies; to industry and business; and to scientists; engineers and the general public.

2. Providing an international technical information service in support of technical assistance programs sponsored by the Department and other Federal agencies.

3. Providing information and assistance to innovators with ideas of potential value to the Federal Government. Working with other Government agencies and State and local bodies to devise programs of assistance to innovators in their efforts to introduce new products and processes.

4. Undertaking research directed to improving the effectiveness of the programs carried out by this Office.

Effective date: June 13, 1963.

HERBERT W. KLOTZ,
Assistant Secretary for
Administration.

[F.R. Doc. 63-6793; Filed, June 26, 1963;
8:52 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

MERCK AND CO., INC.

Notice of Filing of Petition Regarding Food Additives Penicillin and Streptomycin

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition (FAP 1141) has been filed by Merck Chemical Division, Merck and Company, Inc., Rahway, New Jersey, proposing the amendment of § 121.225 of the food additive regulations to provide for the safe use of not less than 5 grams of penicillin nor more than 50 grams of penicillin per ton, or not less than 1.5 grams of penicillin plus 7.5 grams of streptomycin, nor more than 50 grams of the combination per ton of swine feed, for growth promotion and feed efficiency.

Dated: June 20, 1963.

J. K. KIRK,
Assistant Commissioner
of Food and Drugs.

[F.R. Doc. 63-6794; Filed, June 26, 1963;
8:52 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 27-10]

NUCLEAR ENGINEERING CO., INC.

Notice of Amendment of Byproduct, Source and Special Nuclear Material License

Please take notice that no requests for a formal hearing have been filed following publication of the notice of proposed amendment of License No. 4-3766-1 held by Nuclear Engineering Company, Inc. in the FEDERAL REGISTER. The Atomic Energy Commission has this date issued Amendment No. 16 to License No. 4-3766-1. This amendment is in the form set forth in the notice of proposed amendment published in the FEDERAL REGISTER on May 29, 1963, 28 F.R. 5317.

Dated at Bethesda, Md., June 19, 1963.

For the Atomic Energy Commission.

R. LOWENSTEIN.

[License No. 4-3766-1 (C64), Amdt. 16]

In accordance with application dated November 2, 1962, and amendments thereto dated December 19, 1962 and January 15, 1963, License No. 4-3766-1 is hereby amended as follows:

Condition 18(1) is hereby deleted.

The following conditions are added:

19. Any container or package which has been stored outside at Beatty, Nevada for a period of six months shall be covered over with earth.

20. Upon completion of burial operations in a trench, concrete markers shall be in-

stalled at each end of the filled trench. These markers shall contain the following information:

(1) Date of start and completion of burial operations.

(2) Dimensions of the boundaries of the trench.

(3) Total millicuries of byproduct material contained.

(4) Total grams of special nuclear material contained.

(5) Pounds of source material contained.

For the Atomic Energy Commission.

R. LOWENSTEIN.

JUNE 19, 1963.

[F.R. Doc. 63-6769; Filed, June 26, 1963;
8:46 a.m.]

CIVIL AERONAUTICS BOARD

INTERNAL PROCEDURES

Route Matters; Notice of Tentative Changes and Request for Comments

JUNE 24, 1963.

Notice is hereby given that in response to recommendation 21 of the Administrative Conference of the United States, the Civil Aeronautics Board has tentatively decided to make certain changes in its internal procedures for handling route matters.

The Civil Aeronautics Board has been giving careful consideration to the recommendations of the Administrative Conference that would affect its practice and procedure. Particular attention has been given to recommendation 21 which is directed solely to the Board's licensing procedures and the Board has tentatively decided that many of the changes proposed therein should be adopted. Of the ten parts to recommendation 21, the Board has provisionally approved and put into effect parts 1, 3, and 4, but it will reconsider its action in the light of any comments received according to the invitation extended in this Notice. It has also tentatively approved parts 6, 8, 9, and 10, but it will not effectuate the changes recommended therein until it has heard from interested parties. Finally, Board has tentatively determined not to adopt parts 2, 5, and 7.

None of the above determinations calls for formal rule-making. Nevertheless, the Board desires to obtain the comments of interested persons with respect to its proposed disposition of recommendation 21, and is using this Notice as the vehicle for inviting such comments. Ten (10) copies of comments should be submitted and addressed to the Procedure Committee, Civil Aeronautics Board, Washington 25, D.C. Those comments received prior to July 29, 1963, will be considered by the Board before taking final action.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

Proposed procedural changes. Listed below in sequence is the text of each part of recommendation 21, accompa-

nied by a brief statement of the Board's position with respect thereto:

(1) The Board should make more particularized findings reflecting the reasons for instituting, or refusing to institute, a route proceeding, with a view to developing factors of general applicability bearing on the Board's responsibility for planning development of the nation's air transportation network.

The Board has approved this recommendation in principle but adopted its own method of implementation. Instead of using orders instituting or refusing to institute proceedings as the vehicle for announcing its program and priorities, the Board will regularly issue a public statement setting forth this information. It is felt that this method will be just as effective as that suggested by the Conference and will fit in better with the overall planning effort involved in formulating the Board's program. The first of these public statements has already been issued in the form of a press release dated March 27, 1963. Subsequent statements will be issued at six-month intervals and it is planned that the standards contained therein will be continually refined in the light of accumulating experience.

(2) The Board should empower hearing examiners to publish consolidation orders within a limited time after their preparation, except for such internal review as, in individual cases, may be requested by the examiner or directed by the Board.

The Board has decided not to approve this recommended change in its internal procedures for handling problems relating to the consolidation of applications for hearing. The Board feels that it is always desirable for there to be internal review of the examiner's proposed disposition of the more complicated and important consolidation problems and that other consolidation questions are being handled with sufficient expedition under the present practice. It, therefore, does not believe that this recommendation would achieve its purpose, i.e., a speedup in the disposition of consolidation problems. Furthermore, the recommendation would add a new procedure needlessly complicating the Board's practice in this area.

(3) The Board should provide assistance to the Special Counsel for Routes so that internal review of consolidation orders may be more expeditiously completed.

The Board has approved this recommendation. It is believed, however, that the recent reorganization in the Office of the General Counsel announced in a Press Release of August 2, 1962, which created the Rules and Special Counsel Division, has already had the effect of providing the recommended assistance. In addition, the General Counsel has established internal procedures to assure that there will be no delay in reviewing consolidation orders.

(4) The Board should adopt procedures, supplementary to its recent delegation of decisional authority to hearing examiners, which would provide for issuance of notices of review in major route

cases at the time of the Board's consolidation order (or similar procedural step); such notices should make Board review available, at the option of a disappointed party, in all major route cases, while reserving the Board's discretionary authority to review, or decline to review, other route matters.

The Board has approved this recommendation but it does not believe that it is necessary for it to implement its approval by adopting supplementary procedural regulations as the Conference apparently contemplated. The Board has already issued notices of review on its own motion after the initial decision (see e.g., Order E-18324), and it could do so, under existing rules, at an earlier stage as well.

(5) The Board should instruct the Opinion Writing Division, as a general practice, to complete its review of exceptions, briefs and record prior to oral argument, and to supply the Board, in advance of that time, with responses to any questions posed by the Board or its Members and an analysis of the matters which the Board must decide.

The Board has decided to take no formal action on the recommendation at this time. Instead it proposes to experiment with the practice recommended in order to determine what, if any, delay might be caused in getting out the Board's opinion, and whether the analysis would be helpful enough in the decisional process to outweigh any such delay.

(6) The Board should instruct Bureau Counsel to emphasize the selection of major policy alternatives in pending cases, and the considerations applicable thereto, rather than the development of a single Bureau "position"; but this should not exclude the expression by Bureau Counsel of a preference, on balance, for one of the several alternatives considered.

The Board has in principle approved this recommendation. It should be understood, however, that the Board does not intend for Bureau Counsel's conduct to be governed by hard and inflexible standards applicable to all proceedings. We expect the Bureau to take more of an advocate's role in certain types of cases than in others. This is a matter of judgment for the Bureau to make in each case and the Board wishes to make it clear that the question of whether the Bureau presentation measures up to the standard required of it is a purely internal matter which is not an appropriate subject for the litigation process.

(7) The Board should eliminate the routine identification of Board opinions with individual Members, while (a) encouraging individual Member responsibility for supervising the preparation of individual opinions, (b) encouraging individual Members to append supplementary personal comments to opinions "by the Board," and (c) providing for personal identification of any majority opinion to which a Board Member has made a substantial individual contribution.

The Board has rejected this recommendation. It feels that its personalized

opinion practice has been quite helpful in focusing increased Board attention on the quality of opinions and expediting their preparation.

(8) The Board should provide for unrestricted consultation between personnel of the Bureau of Economic Regulation and Board decisional personnel at all stages of a route proceeding, except for (a) cases in which Bureau personnel are concerned with establishing prior misconduct by a party, and (b) Bureau Counsel of record in the route proceeding and his witnesses. The consultation recommended in this part shall not have the effect of enlarging the record or of derogating from the principle that decisions must be based on the record.

This recommendation has been approved. The Board feels that there is room for greater cooperation among its staff components without raising separation of function problems and that such cooperation should be encouraged in the interest of efficiency.

(9) The Board should invite members of the staff to attend Board sessions concerned with route proceedings in which they are involved, including (a) opinion writers, and (b) personnel of the Bureau of Economic Regulation not barred from consultation with decisional personnel. The consultation recommended in this part shall not have the effect of enlarging the record or of derogating from the principle that decisions must be based on the record.

This recommendation has been approved and expanded so that the hearing examiner will also be included among those invited to attend Board deliberations. The Board believes that having the staff present during its deliberation will provide improved policy guidance that will permit the staff to better perform their functions. In addition, the Board believes that by not having the staff participate in its decisional process, it is depriving itself of a potentially large contribution that the staff could make without raising any real separation of function problem. It should be emphasized that any participation by the staff, and especially any participation by representatives of the Bureau of Economic Regulation, will be very carefully controlled. The Board will not permit the deliberations to be turned into a forum for advocacy of positions which have been or more properly should be urged during public phases of the proceeding. Basically, the staff members' role will be limited to answering specific questions put to them by Board Members.

(10) The Board should endeavor to establish some measure of contact between the decisional process at the Board level and the Board's hearing examiners, as for example, by (a) encouraging opinion writers to consult with hearing examiners, and (b) informing hearing examiners, through the Chief Examiner, of developments in Board policy relative to their functions. The consultation recommended in this part shall not have the effect of enlarging the record or of derogating from the principle that decisions must be based on the record.

The Board has approved this recommendation. It believes that it is desir-

able that consultation between opinion writers and hearing examiners be encouraged in the interest of efficiency. Moreover, it would be desirable to keep the Chief Examiner well informed on current Board policy thinking by inviting him to attend Board deliberations.

[F.R. Doc. 63-6801; Filed, June 26, 1963; 8:55 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 14817; FCC 63M-730]

DENVER AREA BROADCASTERS (KDAB)

Order Continuing Hearing

In re application of Frances C. Gaguine and Bernice Schwartz, d/b as Denver Area Broadcasters (KDAB), Arvada, Colorado, Docket No. 14817, File No. BMP-9769, for construction permit.

The Hearing Examiner has for consideration the letter request of the applicant received June 20, 1963, for continuance of certain procedural dates herein, together with the applicant's averment that all other parties have stated that they have no objection to a grant of the requested relief;¹

It is ordered, This 20th day of June 1963, that the subject request is granted, and the procedural dates herein are extended as follows:

Exchange of Exhibits: from June 24, 1963, to July 24, 1963.

Notification of Witnesses: from July 8, 1963, to August 8, 1963.

Hearing: from July 9, 1963, to a date to be set by further Order of the Hearing Examiner.

Released: June 21, 1963.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-6803; Filed, June 26, 1963; 8:55 a.m.]

[Docket No. 14956; FCC 63M-732]

DES MOINES COUNTY BROADCASTING CO.

Order Continuing Hearing

In re application of Robert W. Sudbrink and Margareta S. Sudbrink, d/b as Des Moines County Broadcasting Co., Burlington, Iowa, Docket No. 14956, File No. BP-14193; for construction permit.

The Examiner having under consideration an informal oral request in which all parties have joined, and good cause having been shown;

It is ordered, This 20th day of June 1963, that the hearing herein presently

¹ The continuance is for the purpose of affording the applicant time to resolve the question of whether to file certain pleadings. The consent of the other parties to the requested continuance does not constitute a waiver of their right to oppose any pleadings which the applicant may subsequently file.

scheduled for June 26, 1963, is hereby postponed to July 1, 1963, at the time and place heretofore specified.

Released: June 21, 1963.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-6806; Filed, June 26, 1963; 8:55 a.m.]

[Docket Nos. 14794, 14795; FCC 63M-729]

SERVICE BROADCASTING CORP. AND Z-B BROADCASTING CO.

Order Continuing Hearing

In re applications of Service Broadcasting Corporation, Kenosha, Wisconsin, Docket No. 14794, File No. BP-14786; Maurice J. Weber, Edwin H. Weinberg and Sidney J. Goldstein, d/b as Z-B Broadcasting Co., Zion, Illinois, Docket No. 14795, File No. BP-15458; for construction permits.

The Examiner having under consideration an informal oral request in which all parties have joined, and good cause having been shown;

It is ordered, This 20th day of June 1963, that the hearing herein presently scheduled for July 1, 1963, is hereby postponed to July 2, 1963, at the time and place heretofore specified.

Released: June 21, 1963.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-6804; Filed, June 26, 1963; 8:55 a.m.]

[Docket Nos. 15089-15092; FCC 63M-733]

SPANISH INTERNATIONAL TELEVISION CO., INC., ET AL.

Order Continuing Prehearing Conference

In re applications of Spanish International Television Company, Inc., Paterson, New Jersey, Docket No. 15089, File No. BPCT-3032; Progress Broadcasting Corporation, Paterson, New Jersey, Docket No. 15090, File No. BPCT-3067; Bartell Broadcasters, Inc., Paterson, New Jersey, Docket No. 15091, File No. BPCT-3103; Trans-Tel Corp., Paterson, New Jersey, Docket No. 15092, File No. BPCT-3114; for construction permits for new television broadcast stations.

The Hearing Examiner having under consideration a petition, filed June 20, 1963, by Spanish International Television Company, Inc., requesting postponement of the date for the prehearing conference herein, to which all parties have assented, and good cause having been shown;

It is ordered, This 20th day of June 1963, that the prehearing conference herein presently scheduled for June 25,

1963, is postponed to 9:00 a.m., July 8, 1963.

Released: June 21, 1963.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-6805; Filed, June 26, 1963; 8:55 a.m.]

FEDERAL POWER COMMISSION

[Project Nos. 2269, 2271]

CALAVERAS COUNTY WATER DISTRICT AND TUOLUMNE COUNTY WATER DISTRICT NO. 2

Notice of Postponement of Hearing

JUNE 21, 1963.

Take notice that the hearing in the above-docketed proceeding heretofore scheduled to commence on September 15, 1963, by notice issued June 18, 1963, is hereby postponed to September 16, 1963.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-6775; Filed, June 26, 1963; 8:47 a.m.]

[Docket No. G-18338 etc.]

FLORIDA GAS TRANSMISSION CO.

Notice of Application To Amend

JUNE 20, 1963.

Take notice that on May 1, 1963, as supplemented on May 31, 1963, Florida Gas Transmission Company (Applicant), Winter Park, Florida, filed in Docket No. G-18338, et al., an application to amend the Commission's order, issued August 9, 1961, as modified, to authorize the construction and operation of certain sales lateral pipelines in lieu of those presently authorized for service in Brevard County, Florida, and to substitute the City Gas Company of Florida (City Gas) in lieu of the Brevard County Gas District (District) as the resale customer and distributor of natural gas to be sold and delivered by Applicant for resale and distribution in the communities of Melbourne, Eau Gallie, Titusville, Cocoa, Cocoa Beach and Whispering Hills, all in Brevard County, Florida. Applicant also requests an extension of time to complete construction and place in operation facilities herein proposed.

Applicant's proposals are more fully set forth in the application, as supplemented, on file with the Commission and open to public inspection.

The subject order, as modified, among other things, authorized Applicant to construct and operate 6 miles of 4½-inch lateral pipeline from Applicant's 8-inch Indian River lateral to a point near Melbourne, Florida, and to sell and deliver gas to District for resale and distribution in certain communities in Brevard County.

Applicant states that City Gas has been granted franchises by the commu-

nities of Melbourne, Eau Gallie, Titusville, Cocoa, Cocoa Beach and Whispering Hills to distribute gas in those communities and, therefore, desires to be substituted for District as the resale customer in these proceedings.

Applicant proposes herein to construct and operate the following substitute facilities:

- (1) 3.2 miles of 4-inch lateral to Melbourne,
- (2) 2.6 miles of 4-inch lateral to Eau Gallie,
- (3) 150 feet of 4-inch lateral to Cocoa, and,
- (4) 5.8 miles of 4-inch lateral to Indian River City.

These laterals will be extended from Applicant's existing 8-inch Indian River lateral to the city gates of the respective communities.

The estimated total cost of Applicant's proposed facilities is \$353,513, which cost will be financed in part from funds available from previous financial arrangements for overall system expansion and from current funds.

The estimated third year peak day and annual natural gas requirements for the communities to be served by City Gas are 8,350 Mcf and 642,738 Mcf, respectively.

The distribution facilities proposed to be constructed by City Gas are estimated to cost \$3,315,000.

Protests, petitions to intervene or requests for hearing in this proceeding may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before July 17, 1963.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-6776; Filed, June 26, 1963;
8:47 a.m.]

FEDERAL MARITIME COMMISSION

[Docket No. 1083]

HONG KONG-UNITED STATES ATLANTIC AND GULF TRADE

Expansion of Investigation of Rates; First Supplemental Order

On December 10, 1962, the Commission instituted this proceeding to determine whether the Commission should, pursuant to section 18(b)(5) of the Shipping Act, 1916, disapprove any rate in the trade from Hong Kong to United States Atlantic and Gulf ports.

Isbrandtsen Steamship Company Division of American Export Lines, Inc., a respondent, has filed a petition for "clarification" of the order of investigation herein, alleging that certain malpractices exist in the trade which amount to unfilled rate reductions. The petition requests, in effect, that the investigation be expanded to include the alleged malpractices. Replies and memoranda in opposition to the petition have been filed by respondents. Upon consideration of the petition and the replies thereto, the Commission has determined to expand the scope of this investigation.

Accordingly, it is ordered, That this investigation is hereby expanded to in-

clude a determination as to whether any of the respondents are, or have been, engaging in practices which may be in violation of sections 14, 16 or 17 of the Shipping Act, 1916, or which may result in the charging of lower rates than the rates on file with the Commission in violation of section 18(b)(3) of the Act.

A copy of this order shall be served upon all respondents and upon all parties herein and shall be published in the FEDERAL REGISTER.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene herein, should notify Examiner J. P. Marshall of the Commission promptly and file petitions for leave to intervene in accordance with Rule 5(n) (46 CFR 201.74) of said rule.

By the Commission, June 20, 1963.

THOMAS LISI,
Secretary.

[F.R. Doc. 63-6807; Filed, June 26, 1963;
8:56 a.m.]

AMERICAN MAIL LINE, LTD., ET AL.

Revised Notice of Agreement Filed for Approval

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 75 Stat. 763; 46 U.S.C. 814):

Agreement numbered 8485-C-2 between American Mail Line, Ltd., American President Lines, Ltd., and Pacific Far East Lines, Inc., modifies agreement numbered 8485-C which provides for the creation of a corporation owned by the three parties under the name of Consolidated Marine, Inc. (Consolidated), to operate and perform terminal, husbanding and other related services for the three parties to the agreement. The purpose of the modification is to amend the voting requirements of the Board of Directors of Consolidated and to permit Consolidated to perform terminal, husbanding and other related services for companies other than the parties to the agreement.

The modification further provides that Consolidated may perform stevedoring, truck weighing, cooping, car-loading, truck loading and unloading, cargo container repairing and the like.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C., and may submit within 10 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

JUNE 21, 1963.

[F.R. Doc. 63-6808; Filed, June 26, 1963;
8:56 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-4152]

MICHIGAN WISCONSIN PIPE LINE CO. AND AMERICAN NATURAL GAS CO.

Notice of Proposed Issuance and Sale of Bonds; Increase, Issuance, Sale, and Acquisition of Additional Shares of Stock

JUNE 20, 1963.

Notice is hereby given that American Natural Gas Company ("American"), Suite 4950, 30 Rockefeller Plaza, New York 20, New York, a registered holding company, and one of its subsidiary companies, Michigan Wisconsin Pipe Line Company ("Michigan"), One Woodward Avenue, Detroit 26, Michigan, have filed a joint application-declaration with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(b), 9, 10, 12(c), 12(f) and Rules 42, 43 and 50 thereunder as applicable to the proposed transactions. All interested persons are referred to the joint application-declaration, on file at the office of the Commission, for a statement of the transactions therein proposed, which are summarized below.

Michigan proposes to issue and sell, pursuant to the competitive bidding requirements of Rule 50 under the Act, \$30,000,000 principal amount of First Mortgage Pipe Line Bonds, ---- percent Series due 1983. The interest rate on the bonds (which shall be a multiple of $\frac{1}{8}$ percent) and the price to be paid to Michigan (which price, exclusive of accrued interest, shall be not less than 100 percent nor more than 102 $\frac{3}{4}$ percent of the principal amount thereof) are to be determined by the competitive bidding. The bonds are to be dated July 15, 1963, are to mature July 15, 1983, and are to be issued under Michigan's Mortgage and Deed of Trust, dated as of September 1, 1948, between Michigan and City Bank Farmers Trust Company (First National City Bank, Successor Trustee) and George W. Dillon (Joseph C. Williams, Successor Individual Trustee), as Trustees, as heretofore supplemented and as to be further supplemented by a Fourteenth Supplemental Indenture to be dated as of July 15, 1963.

The proceeds from the proposed sale of bonds, to the extent of \$24,600,000, will be used for the redemption of an equivalent principal amount of outstanding First Mortgage Pipe Line Bonds, 6 $\frac{1}{4}$ percent Series due 1977, and the balance of \$5,400,000 will be used to pay construction costs or to repay in part short-term indebtedness previously incurred for temporary financing of construction.

The joint filing further proposes that (a) Michigan will increase its authorized capital stock, consisting of 550,000 shares of \$100 par value common stock (all of which is owned by American) to 580,000 such shares, and (b) Michigan will issue and sell, and American will acquire, the additional 30,000 shares of Michigan's common stock at par for cash in the amount of \$3,000,000. Prior to or con-

currently with the latter transaction, Michigan will declare and pay to American a special cash dividend of \$3,000,000; American will invest an equivalent amount in the 30,000 shares of common stock of Michigan; and the funds thus derived by Michigan will be applied to the construction of facilities.

The estimated fees and expenses to be incurred in connection with the proposed transactions, all of which are to be paid by Michigan, are as follows:

	Issuance and sale of bonds	Issuance, sale and acquisition of common stock
Federal original issue tax.....	\$33,000	\$3,000
Securities and Exchange Commission registration fee.....	3,000	
Fees and taxes of various States.....	22,000	1,500
Counsel fees:		
Company counsel.....	18,000	500
Local company counsel—10 States.....	10,000	
Accounting fee.....	6,000	
Trustee's fees and expenses.....	13,000	
Fees of gas consultants.....	10,000	
Printing, including preparation of bonds.....	33,000	
Mortgage recording fees and expenses.....	6,000	
Miscellaneous, including \$500 for American Natural Gas Service Co.....	2,910	500
	157,000	5,500

The fee of counsel for the underwriters, estimated at \$11,500, is to be paid by the successful bidder.

Michigan has applied to the Michigan Public Service Commission for authority to effectuate the proposed transactions. A copy of the order entered therein is to be supplied by amendment. It is represented that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than July 3, 1963, request in writing that a hearing be held in respect of such matters, stating the nature of his interest, the reasons for the request, and the issues of fact or law which he desires to controvert; or he may request that he be notified should a hearing thereon be ordered. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon each of the joint applicants-declarants, at the above-stated addresses; and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed contemporaneously with the request. At any time after said date the joint application-declaration, as filed or as it will be amended, may be granted and permitted to become effective, as provided in Rule 23 of the general rules and regulations promulgated under the Act; or the Commission may grant exemption from such rules and regulations, as provided in Rules 20(a) and 100 thereof, or take such other action as it deems appropriate.

For the Commission (pursuant to delegated authority).

[SEAL]

ORVAL L. DuBois,
Secretary.

[F.R. Doc. 63-6777; Filed, June 26, 1963; 8:47 a.m.]

[File No. 811-638]

OVERLAND CORP.

Notice of Filing of Application

JUNE 20, 1963.

Notice is hereby given that The Overland Corporation ("Overland"), 500 Security Building, Toledo, Ohio, a Delaware corporation and a registered closed-end, non-diversified investment company has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order exempting Overland from sections 15(a), and 17(a) and 17(f) of the Act. All interested persons are referred to the application on file with the Commission for a complete statement of the representations contained in it which are summarized below.

Overland (formerly Willys-Overland Motors, Inc.), is a Delaware corporation organized in 1936. Until April 28, 1953, it was engaged in the manufacture of motor vehicles. In 1954, it became a registered investment company.

On December 19, 1953, Overland offered to the holders of 2,775,967 shares of its stock then outstanding the opportunity to withdraw as stockholders and receive their pro rata share of its net assets (the 1953 Plan). Pursuant to this Plan, 1,605,187 shares were surrendered, for each of which there was distributed a cash payment of \$14.00 and a Certificate which entitled the holder thereof to receive upon final distribution 1/2,775,967ths of the Special Reserve established under the Plan relating to renegotiation of government contracts and unresolved tax liabilities. The Plan provided that cash and prime short-term securities would be held by Overland in an amount equal to the Special Reserve. As of June 13, 1963, there were 793 holders of Certificates issued pursuant to that Plan.

A Certificate holder under the 1953 Plan filed a suit in the Court of Chancery of the State of Delaware against Overland in 1959, which sought, among other things, (a) an accounting with respect to the allocation of the expenses which had been charged to the Special Reserve, and (b) an order directing the company to wind up its affairs with respect to the automotive business and to distribute to the receipt holders to funds to which they are entitled. On December 29, 1961, the Delaware Court approved a settlement of the lawsuit. The order of the Delaware Court provided, among other things, that until final distribution, \$35,000 annually will be charged to the Certificate holders' share of the Special Reserve as their pro rata share of the expenses of Overland and that final distribution of the Special Reserve be made promptly after the termination of pending tax litigation. The Court retained jurisdiction of the action until the provisions of the order

were "fully effectuated and for the purpose of taking any action that may be appropriate to give effect to or to enforce the order."

On February 27, 1962, Overland again offered its stockholders the opportunity to withdraw as stockholders and receive their pro rata share of its net assets. Under the terms of the 1962 Plan, each stockholder electing to surrender his full interest in his stock received for each share \$24.42 plus a certificate entitling the holder thereof to receive upon final distribution 1/2,682,494ths of the Special Reserve. 24,418 shares were surrendered under the 1962 Plan. As of June 13, 1963, there were 456 holders of Certificates issued under the 1962 Plan.

On December 10, 1962, Empire Securities, Inc., which held 96.85 percent of the outstanding stock of Overland merged with Overland under the provisions of section 253 of the Delaware Corporation Law. Notice has been given to the stockholders of Overland by registered mail stating that the merger has been accomplished and that under the terms of the merger, all stockholders other than Empire Securities, Inc., are entitled to receive \$22.75 for each share of stock plus a Certificate entitling the holder thereof to receive upon final distribution 1/2,682,494ths of the Special Reserve. The Toledo Trust Company has been authorized to make the payments and to issue the Certificates to all of the stockholders other than Empire Securities, Inc., and Overland has deposited with that Bank the funds necessary to make such payments and has supplied them with the necessary certificates. As of June 13, 1963, there were 125 holders of Certificates issued pursuant to the merger.

The application states that Overland has only 15 stockholders of record representing 11 beneficial owners who are all members of the family of Ward M. Canaday, the Chairman of the Board of Directors and President of Overland.

Section 15(a) of the Act provides, among other things, that it shall be unlawful for any person to serve or act as an investment advisor of a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of such registered investment company and provides in substance for its automatic termination in the event of its assignment by the investment advisor. With reference to the requirements of section 15(a), it is stated that there is no public interest to protect in relation to investment advice or in investment action of Overland with the exception of the assets applicable to the Special Reserve which will continue to be held in cash and/or Government securities under the supervision of the Board of Directors.

Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling to or purchasing from such registered investment company any security or other property, subject to certain exceptions not perti-

ment here. Because the interests of the holders of Certificates are limited solely to receiving upon final distribution their share of the Special Reserve and they have no interest in the securities portfolio or other investments or assets of Overland, the application states that it would appear appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act if an exemption from section 17 (a) of the Act were granted pursuant to section 6(c) of the Act.

Section 17(f) of the Act and Rule 17f-2 permit an investment company to act as its own custodian subject to certain conditions, including a requirement that its securities be held in safe-keeping by a bank and that they be verified by complete examination of an independent public accountant retained by the investment company at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such company. It is stated that there would appear to be no public purpose in requiring so-called surprise audits or verification, except with respect to the assets applicable to the Special Reserve, which will continue to be subject to the requirements of section 17(f) of the Act and Rule 17f-2 adopted thereunder.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person or transaction from any provision of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than July 11, 1963, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Overland at the address set forth above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order

disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

It is ordered, That the Secretary of the Commission shall give notice of the filing of this application by mailing a copy of this notice by registered mail to the Applicant; that notice (to all other persons) shall also be given by publication of this notice in the FEDERAL REGISTER; and that a general release of this Commission in respect of this notice be distributed to the press and mailed to the mailing list for releases.

It is ordered, That The Overland Corporation shall give immediate Notice of the Filing of this application by mailing a copy of this notice by First Class Mail to the receipt holders of the Special Reserve.

For the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 63-6778; Filed, June 26, 1963;
8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

JUNE 24, 1963.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 38391: *Grain and grain products from Pittsburgh, Pa., to trunk-line and New England territory points.* Filed by Traffic Executive Association-Eastern Railroads, Agent (E.R. No. 2675), for interested rail carriers. Rates on grain and grain products, in carloads, from Pittsburgh, Pa., and points grouped therewith, to points in trunk-line and New England territories.

Grounds for relief: Rate relationship with Buffalo, N.Y., and grouping.

FSA No. 38392: *Substituted service—CNJ and RDG Co., for motor carriers.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 220), for interested carriers. Rates on property loaded in highway trailers and transported on railroad flat cars, between points in central, middlewest and southwestern territories, on the one

hand, and points in middle Atlantic and New England territories, on the other.

Grounds for relief: Motor-truck competition.

By the Commission.

[SEAL] HAROLD D. McCoy,
Secretary.

[F.R. Doc. 63-6791; Filed, June 26, 1963;
8:52 a.m.]

[Notice 824]

MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 24, 1963.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 65610. By order of June 20, 1963, the Transfer Board approved the transfer of a portion of the "claimed grandfather rights" sought in the BOR application in No. MC 98562 (Sub No. 2), and the substitution as applicant for that portion of W. C. Keyt and Charles A. Hershisier, doing business as Cookeville Motor Line, Nashville, Tenn., in the above-numbered BOR 99 application filed January 11, 1963, covering operations in interstate or foreign commerce under the former second proviso of Section 206(a) (1) of the Act, supported by Tennessee Certificate No. 1735, as amended, pursuant to a Form BMC 75 Statement filed March 26, 1959, accepted April 20, 1959, and assigned docket No. MC 98562 in the name of Cliea Robinson, doing business as Smithville Freight Lines, Smithville, Tenn. The portion of the Tennessee Certificate No. 1735 transferred herein as amended and reassigned Certificate No. 2131 covers the transportation of Property, or Freight, subject to certain restrictions, over specified highways, between Nashville and Cookeville, Tenn., serving no intermediate points. Walter Harwood, 515 Nashville Bank and Trust Building, Nashville, Tenn., attorney for applicants.

[SEAL] HAROLD D. McCoy,
Secretary.

[F.R. Doc. 63-6792; Filed, June 26, 1963;
8:52 a.m.]

CUMULATIVE CODIFICATION GUIDE—JUNE

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